

DUPLICATE

**REIMBURSEMENT AGREEMENT
FOR PROJECT No. 43-1, CARMEL MOUNTAIN ROAD,
NEIGHBORHOOD 10 BOUNDARY TO LITTLE McGONIGLE RANCH ROAD
(formerly DEL MAR MESA ROAD)
IN THE DEL MAR MESA SPECIFIC PLAN AREA**

THIS AGREEMENT [Agreement] is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation [City] and Pardee Homes (formerly known as Pardee Construction Company), a California Corporation [Subdivider], [collectively the Parties], for reimbursement for design and construction of Project No. 43-1, Carmel Mountain Road – Neighborhood 10 Boundary to Little McGonigle Ranch Road (formerly Del Mar Mesa Road) in the Del Mar Mesa specific Plan Area in accordance with the Del Mar Mesa Public Facilities Financing Plan.

RECITALS

1. Subdivider owns real property known as the Shaw Lorenz project, located in the Del Mar Mesa Specific Plan area [Property]. Subdivider certifies that it is developing the Property subject to the requirements and conditions of the City Council of the City of San Diego [City Council].

2. On May 11, 2004, by Resolution No. R-299207, 299208 and 299205, City Council granted Vesting Tentative Map No. 25674 [VTM], Planned Development Permit No. 25675 [PDP], Site Development Permit No. 25676 [SDP], Coastal Development Permit No. 25677 [CDP], and Neighborhood Use Permit No. 76234 [NUP], and adopted the Mitigation Monitoring and Reporting Program, subject to certain conditions determined to be necessary for Subdivider's development. A copy of the VTM conditions of approval are attached as **Exhibit A**.

3. Along with other facilities, the Del Mar Mesa Specific Plan, which is on file in the Office of the City Clerk as Document No. OO-18821, and the Carmel Valley Neighborhood 10 Precise Plan, which is on file in the Office of the City Clerk as Document No. RR-284659, identified the need for the construction of Carmel Mountain Road in the Del Mar Mesa Community.

4. On November 1, 2005, by Resolution No. 301007, the City Council adopted the Del Mar Mesa Public Facilities Financing Plan and Facilities Benefit Assessment [FBA] for Fiscal Year 2006 [Financing Plan]. The Financing Plan identifies Project No. 43-1, Carmel Mountain Road – Neighborhood 10 Boundary to Little McGonigle Ranch Road (formerly Del Mar Mesa Road), which includes a wildlife crossing under Carmel Mountain Road and a multi-use trail along Carmel Mountain Road, as shown in **Exhibit B**. This Agreement relates to the construction of Carmel Mountain Road consisting of grading, storm drain improvements, trails and a wildlife undercrossing for Project No. 43-1 as more particularly described and shown in **Exhibit C [Project]**.

5. The Financing Plan estimates a total budget of \$7,187,000 for Project No. 43-1, of which \$4,487,000 is a direct subdivider responsibility. The balance of \$2,700,000 (the portion of Project No. 43-1 to be funded by the FBA), plus the applicable inflationary rate through Fiscal Year 2010 as set forth in the Financing Plan, minus the City's Administrative Costs (as defined in section 12.1.5), and minus City's equipment expenditures, is the total and maximum City funds potentially available for reimbursement to Subdivider for the Project. The City's

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Administrative Costs are currently estimated at \$126,000. Applying the Financing Plan's applicable inflationary rate through Fiscal Year 2010, and deducting the City's Administrative Costs and the City's equipment costs, results in the total and maximum City funds potentially available for reimbursement in the form of FBA credits to Subdivider in the amount of \$3,000,000 for the Project [Maximum Funds]. Subdivider is not automatically entitled to the Maximum Funds or any other reimbursement. Subdivider must satisfy all terms of this Agreement to become eligible for any portion of the Maximum Funds if and as they are collected and become available for issuance of FBA credits.

6. Subdivider's Estimated Cost (as defined in Section 3.3) for the Project is \$4,374,000. The Parties acknowledge that the Estimated Cost currently exceeds, and may continue to exceed, the Maximum Funds, and that any costs incurred by Subdivider in excess of the Maximum Funds shall constitute a Non-Reimbursable Cost. Notwithstanding the fact that the total Estimated Cost for completion of the Project is \$4,374,000, Subdivider agrees that it will not seek, nor be entitled to, reimbursement in an amount greater than the Maximum Funds unless the Financing Plan is amended with an increased budget for the Project. In such case, Subdivider shall be eligible for reimbursement in an amount not to exceed the increased budget for the Project in the Financing Plan amendment.

7. This Agreement is intended by the Parties to define the method, terms, and conditions of reimbursement to Subdivider for the funds to be expended for the planning, permitting, and construction of the Project.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties, and for other good and valuable consideration, City and Subdivider agree as follows:

ARTICLE I. SUBJECT OF THE AGREEMENT

- 1.1 **Design and Construction of Project.** Subdivider agrees to design and construct a complete and operational Project fully suited to the purpose for which it was designed and in accordance with this Agreement; the Plans and Specifications; the Financing Plan; and the VTM, including applicable VTM conditions of approval. Subdivider also agrees to design and construct the Project as depicted on **Exhibit C** within the timeframe established by the Project Schedule attached as **Exhibit D**, and for the Estimated Costs attached as **Exhibit E**.
- 1.2 **Operational Acceptance.** City's acceptance of Project shall occur upon Subdivider's receipt of a letter of acceptance from City after Subdivider complies with the Punch List (as defined in Section 15.2.1) and passes Final Inspection (as defined in Section 15.4) confirming that Project is substantially complete and operational [Operational Acceptance].
- 1.3 **No Increase in Maximum Funds.** The Parties acknowledge that the Estimated Cost currently exceeds, and may continue to exceed, the Maximum Funds. Both Parties agree that there are and may continue to be insufficient funds available in the FBA to fully fund completion of the Project. Nevertheless, Subdivider has agreed to complete the Project in exchange for up to \$3,000,000 in FBA credits and to forgo any reimbursement for the

difference between the Estimated Costs and the Maximum Funds, unless the Financing Plan is amended to increase the budget for the Project. In such case, Subdivider shall be eligible for reimbursement in an amount not to exceed the increased budget for the Project in the Financing Plan amendment

ARTICLE II. PROJECT SCHEDULE

- 2.1 Project Schedule.** Subdivider shall perform and complete the work under this Agreement according to the Project Schedule attached as **Exhibit D**, Project Schedule Obligations and Components attached as **Exhibit F**, the Meeting Requirements in **Exhibit G**, and Preconstruction, Progress, and Special Meeting Agendas in **Exhibit H**.
- 2.2 Project Completion.** Subdivider agrees that all work on the Project under this Agreement will be complete and ready for operational use according to the Project Schedule Obligations and Components.
- 2.3 Changes in Project Schedule.**
- 2.3.1 Changes in the Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 3.3.3.
- 2.3.2 Changes in the Project Schedule that do not increase the Estimated Cost may be approved by the engineer designated by City's Engineering and Capital Projects Department, which shall be responsible for review and approval of the progress of, and changes to, the Project [Resident Engineer]; provided, however, that the Project is still completed in accordance with the Financing Plan (including any associated phasing plans) and all conditions of approval including, but not limited to, the VTM conditions of approval.
- 2.4 Notification of Delay.** If Subdivider anticipates or has reason to believe performance of work under this Agreement will be delayed, Subdivider shall immediately notify the representative designated by City's Engineering and Capital Projects Department to manage the Project on behalf of City [Project Manager]. Unless City grants Subdivider additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include: an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Subdivider needs as a result of the cause of the delay. If Subdivider anticipates or has reason to believe the delay will increase the Estimated Cost, Subdivider shall also give notice to City in accordance with Section 3.4.
- 2.5 Delay.** If delay in the performance of work required under this Agreement is caused by unforeseen events beyond the control of the Parties, such delay may entitle Subdivider to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. A delay in the performance of work or any activity by City or Subdivider that affects a deadline to perform imposed on the other

party by this Agreement will entitle the other party to the number of days City or Subdivider failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on Project: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in the completion of Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Subdivider. Any delay claimed to be caused by Subdivider's inability to obtain materials, equipment, labor, or additional required services shall not entitle Subdivider to an extension of time unless Subdivider furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Subdivider's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Subdivider shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Subdivider, its consultants, contractors, subcontractors, employees, or other agents [collectively, "Subdivider's agents"]. A change in Project Schedule does not automatically entitle Subdivider to an increase in Reimbursable Costs (as defined in Section 3.2). If City determines that the delay materially affects the Project, City may exercise its rights under Section 2.7 of this Agreement.

- 2.6 **Costs of Delay.** City and Subdivider acknowledge construction delays may increase the cost of Project. Unless Subdivider informs City pursuant to Sections 2.4 and 3.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through assessed fees in the Financing Plan, funding will be insufficient to cover the cost increase. Notwithstanding that pursuant to San Diego Municipal Code Section 61.2200 et seq. City may periodically update the Financing Plan to reflect changes in Estimated Costs of Project (including potentially increasing Estimated Costs of Project based upon actual and reasonable costs as appropriate), Subdivider agrees to absorb any increase in Estimated Costs and/or Interest thereon not accounted for in the Financing Plan (or future updates of the Financing Plan) allowing City reasonable opportunity to assess and collect necessary FBAs because Subdivider failed to timely notify the City in writing as required under Sections 2.4 and 3.4.

2.7 City's Right to Terminate for Default.

- 2.7.1 If Subdivider fails to adequately perform any obligation required by this Agreement, Subdivider's failure constitutes a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Subdivider undertakes all reasonable efforts to ensure the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement including all rights of Subdivider and any person or entity claiming any rights by or through Subdivider under this Agreement. A delay shall not constitute a Default if Subdivider has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 2.4, and such delay was caused by unforeseen events that justify the delay as set forth in Section 2.5.
- 2.7.2 If City terminates the Agreement due to Subdivider's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Subdivider or Subdivider's agents for the construction of Project. Subdivider shall include, and require its contractors and subcontractors to include, provisions in their contracts and subcontracts, that City is a third party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.
- 2.7.3 The rights and remedies of City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Subdivider, including any claims for damages against Subdivider that City may assert as a result of the Default.

- 2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.** If Subdivider files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Subdivider, immediately terminate this Agreement, and terminate all rights of Subdivider and any person or entity claiming any rights by or through Subdivider. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

- 3.1 Project Costs.** Project Costs are Subdivider's reasonable costs of materials, engineering and design, and construction as necessary for the Project as approved by the City and depicted on **Exhibit C** and as set forth in **Exhibit E** (Estimated Cost). Project Costs do not include Subdivider's Administrative costs (as defined in Section 3.3.1).
- 3.2 Reimbursable Costs.** Subdivider may seek reimbursement only for Reimbursable Costs. Reimbursable Costs shall consist only of the Estimated Costs (as defined in Section 3.3)

reasonably expended by Subdivider and approved for reimbursement in the Financing Plan and approved by City under the terms of this Agreement.

3.2.1 ***Non-Reimbursable Costs.*** Non-Reimbursable Costs include: (1) Any cost in excess of the Maximum Funds; (2) any cost in excess of the Estimated Costs not approved in accordance with Section 3.3.3; (3) any cost identified in this Agreement as a Non-Reimbursable Cost; (4) any cost to remedy Defective Work (as defined in Section 22.1); (5) any cost incurred as a result of Subdivider's or Subdivider's agents' negligence, omissions, delay, or Default; (6) any cost of substituted products, work, or services not necessary for completion of the Project, unless requested and approved by City in writing; (7) any cost not approved by City in the manner required by this Agreement or the Charter of the City of San Diego and rules, regulations, or laws promulgated thereunder; (8) any cost not supported by proper invoicing or other documentation as reasonable and necessary; and (9) any cost in excess of FBAs actually collected by the City and available for reimbursement to Subdivider for the design and construction of this Project. Additionally, the fair value as reasonably determined by City of any property that is destroyed, lost, stolen, or damaged rendering it undeliverable, unusable, or inoperable for City constitutes a Non-Reimbursable Cost. Refundable deposits, such as utility deposits, also constitute a Non-Reimbursable Cost.

3.3 **Estimated Cost(s).** Subdivider's Estimated Costs shall consist only of: (i) Project Costs, (ii) Subdivider's Administrative Costs (as defined in Section 3.3.1), and (iii) the Project Contingency (as defined in Section 3.3.2). The total Estimated Cost of the Project is \$4,374,000.

3.3.1 ***Subdivider's Administrative Costs.*** Subdivider's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling a flat five percent (5%) of Subdivider's Project Costs for the Project.

3.3.2 ***Project Contingency.*** A Project Contingency of ten percent (10%) of estimated construction costs is included in the Estimated Cost. The Project Contingency shall not be available for: (i) work required due to Subdivider's or Subdivider's agents' failure to perform work or services according to the terms of this Agreement or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of Subdivider or Subdivider's agents.

3.3.3 ***Change Orders and Adjustments to Estimated Cost.*** The "Procedure for Processing Change Orders" is attached as **Exhibit I**. Change Orders shall be on a form acceptable to the City. Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with **Exhibit I**. The Estimated Cost may only be increased if Subdivider provides documentation showing the increase is reasonable in nature and amount, and is due to causes beyond Subdivider's control or otherwise not the result of unreasonable conduct by Subdivider which may, based on actual impact on Project, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires;

floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in the completion of Project; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Subdivider. Subdivider shall not be reimbursed, and no Change Order may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), or Subdivider's or Subdivider's agents' negligence. Subdivider shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order. City may approve an increase in Estimated Costs and/or delineate a project which may be constructed within Estimated Costs. If City chooses not to pursue the above options, Subdivider may elect to construct the Project and forgo any reimbursement in excess of Estimated Cost.

- 3.4 Notification of Increased Estimated Costs.** If Subdivider anticipates or has reason to believe the cost of the Project will exceed the Estimated Cost, Subdivider shall notify City in writing within fourteen (14) calendar days of becoming aware of the potential increase. Subdivider agrees to absorb any increase in Estimated Costs and/or Interest thereon not accounted for in the Financing Plan (or future updates of the Financing Plan). This written notification shall include an itemized cost estimate and a list of recommended revisions Subdivider believes will bring the construction cost to an amount within the Estimated Cost.

ARTICLE IV.

COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

- 4.1 Compliance.** Subdivider shall bid and award contracts to complete the Project in accordance with the Charter of the City of San Diego and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code and current City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations [Required Contracting Procedures]. Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's small and local business program for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Project, Subdivider shall consult with Public Works Contracting Group. Subdivider shall work with City's Public Works Contracting Group to ensure that all Required Contracting Procedures are met. Subdivider understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of this Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for reimbursement.
- 4.2 Bidding Documents.** Following City review of the Construction Documents, Subdivider shall prepare final corrected Construction Documents to be submitted to City for review and approval, in accordance with City's standard review procedures prior to solicitation of bids.
- 4.2.1 *Submission of Construction Documents.*** Subdivider shall submit bidding documents to City for approval before soliciting bids for work on Project. City retains the right to notify Subdivider of necessary corrections and will notify Subdivider of corrections within fifteen (15) Working Days of submittal date.
- 4.2.2 *Obtain all Permits and Approvals.*** Subdivider shall obtain all necessary permits, including but not limited to environmental, grading, building, mechanical, electrical, and plumbing. Approval of Construction Documents will be evidenced by City's issuance of a letter indicating Subdivider may proceed with competitive bidding.
- 4.3 Solicitation of Bids.** Subdivider shall solicit sealed bids for the construction of Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days. Subdivider shall notify City of the time and place of each bid opening. Subdivider shall work with City's Public Works Contracting Group to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures.
- 4.4 Bid Opening and Award of Contract.** Subdivider shall open bids and award contracts in accordance with all Required Contracting Procedures. Subdivider shall work with Public Works Contracting Group to ensure that bids are opened and contracts are awarded in the manner required in accordance with the Required Contracting Procedures. Subdivider shall publicly open sealed bids in the presence of City's authorized

representative(s). The bidding contractors shall be permitted to be present at the bid opening. City's representative(s) shall be provided with all bids received immediately after the bid opening and with a copy of the tabulation of bid results upon Subdivider's completion. Contract(s) for the construction of the Project shall be awarded by Subdivider to the lowest responsible and reliable bidder in accordance with Required Contracting Procedures, as mutually determined by Subdivider and City's authorized representative(s). In the event of a dispute, the City shall have ultimate authority to determine to which contractor Subdivider is to award the bid.

4.4.1 In the event that the lowest responsible and reliable bid exceeds the Estimated Cost, any reimbursement for said increase shall be subject to approval by Change Order pursuant to Section 3.3.3 following award of contract.

4.4.1.1 In the event City Council does not approve the increased cost, at the City's option:

4.4.1.1.1 City may terminate this Agreement. In the event the Agreement is terminated, the obligations of Subdivider pursuant to this Agreement for the construction of the Project shall be released without further liability. This release shall in no way affect the obligations of Subdivider with respect to any terms or conditions of the VTM and VTM conditions of approval, Development Agreements, or other approvals and agreements with City. However, prior to termination of this Agreement, City shall reimburse Subdivider (at the City's option with either FBA credits or cash reimbursement) for the engineering and design costs reasonably incurred and expended by Subdivider in accordance with this Agreement and within the Estimated Cost in accordance with Section 3.3. Subdivider shall provide City with copies of all executed contracts; or,

4.4.1.1.2 City may work with Subdivider to rebid and/or redesign the Project;
or,

4.4.1.1.3 With Subdivider's consent, Subdivider may award the bid and assume responsibility for the additional costs in excess of Estimated Cost.

4.5 Nondiscrimination Requirements.

4.5.1 *Compliance with the City's Equal Opportunity Contracting Program.* Subdivider shall comply with the City's Equal Opportunity Contracting Program. Subdivider shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Subdivider shall provide equal opportunity in all employment practices. Subdivider shall ensure its consultants, contractors and their subcontractors comply with the City's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold the Subdivider liable for any discriminatory practice of its consultants, contractors or their subcontractors.

4.5.2 ***Nondiscrimination Ordinance.*** Subdivider shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Subdivider shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Subdivider understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between the Subdivider and any consultants, contractors, subcontractors, vendors and suppliers.

4.5.3 ***Compliance Investigations.*** Upon City's request, Subdivider agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Subdivider used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Subdivider for each contract, subcontract or supply contract. The Subdivider further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code Sections 22.3501-22.3517.] Subdivider understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against Subdivider up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Subdivider further understands and agrees the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.6 **Equal Benefits.** This Agreement is with a sole source and therefore, Subdivider is not subject to the City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC]. However, the Equal Benefits Ordinance is applicable to contracts that Subdivider enters into with respect to the Project. Therefore, Subdivider shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Subdivider shall include in each of its contracts with its contractor(s) and consultant(s) provisions (1) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (2) stating that failure to maintain equal benefits is a material breach of those agreements; and (3) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. SDMC § 22.4304(e)-(f). In addition, Subdivider's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. SDMC § 22.4304(a)-(b). Subdivider's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the EBO's requirements. SDMC § 22.4304(c). Additionally, Subdivider's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the EBO. SDMC § 22.4304(d). Subdivider shall ensure that its contractor(s) and consultant(s)

complete the Equal Benefits Ordinance Certification of Compliance included herein as **Exhibit J**.

ARTICLE V. PREVAILING WAGE

- 5.1 Prevailing Wage.** The Project shall pay Prevailing Wage to the extent required by the California Labor Code, the Charter of the City of San Diego and the rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code, City of San Diego Resolutions and Ordinances, City of San Diego Council Policies, or if otherwise required by the City Council.

ARTICLE VI. CONSULTANTS

- 6.1 Selection of Consultant.** Subdivider's hiring of a consultant is subject to approval by City. Subdivider's consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Subdivider shall cause the provisions in **Exhibit K** "Consultant Provisions" to be included in its consultant contract(s) for the Project. The selection of any consultant is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the City Charter, the San Diego Municipal Code, City Council Policies, and the City's Administrative Regulations. Subdivider shall work with Public Works Contracting Group to ensure that City's consultant selection procedures are met. Subdivider understands that it must comply with all consultant selection procedures applicable to the City unless a waiver of those procedures is obtained. Failure to adhere to all applicable consultant selection procedures is a material breach of this Agreement, and any contract awarded not in accordance with the City's consultant selection procedures shall be ineligible for reimbursement. Notwithstanding the foregoing, Subdivider is not required to comply with the applicable consultant selection laws, rules, and regulations identified above with respect to those consultants with whom Subdivider entered into a contract for the Project at least one year prior to the Effective Date of this Agreement, but Subdivider shall cause the provisions of **Exhibit K** "Consultant Provisions" to be included in these consultant contract(s).
- 6.2 Equal Benefits and Equal Opportunity.** The requirements of City's Equal Benefits Ordinance apply to Subdivider's consultant contracts. See Section 4.6. The nondiscrimination requirements set forth in Section 4.5 apply to Subdivider's consultant contracts.
- 6.3 Estimated Budget.** Subdivider shall require its consultant to prepare an estimated budget for the Project.
- 6.4 Schematic Drawings.** Subdivider shall require its consultant to prepare schematic drawings for the Project for City approval.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

- 7.1 **Standard of Care.** Subdivider agrees that the professional services provided under this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
- 7.2 **Compliance with all Laws, Design Standards, and Construction Standards.** In all aspects of the design and construction of Project, Subdivider shall comply with all laws and the most current editions of the Green Book, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit L**. It is the sole responsibility of Subdivider to comply with The Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. The Subdivider shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit M** "Certificate for Title 24/ADA Compliance."
- 7.3 **Imputed Knowledge.** Subdivider shall be responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge will be imputed to Subdivider to the fullest extent allowed by law.
- 7.4 **City Approval.** Subdivider shall be required to obtain City approval of design, plans, and specifications in the manner required in **Exhibit N**. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the duly authorized City representative designated by this Agreement.
- 7.5 **City Approval Not a Waiver of Obligations.** Where approval by City, the Mayor, or other representatives of City is required, it is understood to be general approval only and does not relieve Subdivider of responsibility for complying with all applicable laws, codes, regulations and good consulting, design, or construction practices.

ARTICLE VIII. CONSTRUCTION AND DRUG-FREE WORKPLACE

- 8.1 **Compliance with Project Schedule and Construction Requirements.** Subdivider shall commence construction of Project in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in **Exhibit O** "Construction Obligations." Subdivider shall diligently pursue such construction to completion. Failure to maintain Project Schedule constitutes a Default subject to Section 2.7. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under any other provision of this Agreement or those available at law or in equity.

- 8.2 **Drug-Free Workplace.** Subdivider agrees to comply with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. Subdivider shall ensure that its contractors comply with the requirements of City's Council Policy 100-17. The Subdivider shall certify to City it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace in form and content of **Exhibit P**.

ARTICLE IX. PRODUCTS

- 9.1 **Product Submittal and Substitution.** To the extent product specification is not addressed by the most recent edition of the Standard Specifications for Public Works Construction (including the City of San Diego's standard special provisions) [Green Book] or Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Subdivider shall obtain City approval of products and substitution of products in the manner provided in **Exhibit Q** "Product Submittal and Substitution."

- 9.1.1 ***Not a Release of Liability.*** City's review of samples in no way relieves Subdivider of Subdivider's responsibility for construction of the Project in full compliance with all Construction Documents.

ARTICLE X. EXTRA WORK

- 10.1 **City Authority to Order Extra Work.** Any City additions or modifications to work or Subdivider obligations under this Agreement not described within City-approved Construction Documents [Extra Work] may be ordered by City prior to completion pursuant to the terms and conditions listed in **Exhibit R** "Extra Work Provisions."

ARTICLE XI. CHANGED CONDITIONS

- 11.1 **Changed Conditions.** Changed Conditions shall have the meaning as defined in the Green Book. The Parties acknowledge and agree that even if Changed Conditions are found to be present, the Project shall not exceed the Estimated Cost without express City Council approval of an increase to the Estimated Cost in accordance with Section 3.3.3. Absent such express approval of additional funds, Subdivider shall provide City with value engineering and Parties shall return the Project to within the Estimated Cost.

ARTICLE XII. REIMBURSEMENT

- 12.1 **Reimbursement to Subdivider.**

- 12.1.1 **Notification of Reimbursable Project.** Along with the Project application to City's Development Services Department, and prior to commencement of any work on the Project (including hiring a consultant), Subdivider shall submit a "Notification of Reimbursable Project" form (attached as **Exhibit S**) to the Development Services Department, Facilities Financing, and the City department

designated by City for individual Project approval and/or supervision [Responsible Department]..

12.1.2 ***Type of Reimbursement.*** Subdivider shall be eligible for up to \$3,000,000 in FBA credits, for the Reimbursable Costs expended by Subdivider and approved by City in accordance with this Agreement and the Financing Plan. The Financing Plan currently has \$3,000,000 of the Estimated Cost scheduled for reimbursement beginning in or after Fiscal Year 2008 through 2010. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Subdivider shall not receive a cash reimbursement or FBA credits for that portion of costs exceeding the Maximum Funds unless and until the Financing Plan is updated and there are sufficient funds to reimburse Subdivider, in whole or in part, from the FBA. If sufficient funds for Project No. 43-1 are unavailable in the FBA to reimburse Subdivider, City shall reimburse Subdivider only if and as funds accrue in the FBA for the Project. Where FBA credits are requested and approved by City, credit reimbursement shall be made in accordance with the schedule in the Financing Plan. Subdivider acknowledges and agrees that if the Financing Plan is not updated to include additional FBA funds for the Project, or there are otherwise no additional FBA funds available for collection by City to fund the Project costs, Subdivider shall not be reimbursed by City for any portion of Subdivider's outstanding Project costs or expenditures, and Subdivider expressly agrees to fully absorb all such outstanding costs without any reimbursement from City.

12.1.3 ***Funds for Reimbursement.*** Subdivider shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for the Project in the Financing Plan, if and as such funds become available for the Project, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement described in Section 12.1.7 and in the priority of reimbursement described in Section 12.1.9.

12.1.4 ***Amount of Reimbursement.*** Subdivider shall be entitled to only Reimbursable Costs in accordance with Section 3.2 in an amount not to exceed Maximum Funds or the Estimated Costs, whichever is lower in accordance with Section 3.3.

12.1.5 ***City's Administrative Costs.*** City's Administrative Costs shall be paid prior to any reimbursement to Subdivider and shall consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Project, (ii) review and approve the plans and specifications for the Project, and (iii) inspect and approve work performed on the Project during construction until completion and acceptance of the Project [City's Administrative Costs].

12.1.6 **Interest.** Subdivider is not entitled to any payment of interest under this Agreement.

12.1.7 **Method of Reimbursement.** Subdivider shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Project for which Subdivider was not previously reimbursed or granted FBA credit [Reimbursement Request]. Reimbursement Requests for projects other than those covered by this Agreement must be submitted as separate requests. The Reimbursement Request must also include all relevant documents in accordance with this Article XII. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete, and shall notify Subdivider of such deficiencies within sixty (60) calendar days of Subdivider's Reimbursement Request submittal. Subdivider shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify Subdivider within sixty (60) calendar days regarding Subdivider's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Subdivider until City confirms receipt of all relevant documentation sufficient to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request [Reimbursement Request Approval], City shall reimburse Subdivider for those Reimbursable Costs within ninety (90) calendar days of the date of Reimbursement Request Approval provided that funds are available in the FBA for the Project, and that the Project is scheduled in the Financing Plan for reimbursement at that time.

12.1.7.1 **Withholding** Subject to the limitations of this Article XII, and at the City's discretion, provided that Reimbursement Requests have been approved for such amounts, Subdivider shall be eligible for reimbursement as follows:

12.1.7.1.1 Up to twenty-five percent (25%) of the Reimbursable Costs for the Project subject to the Subdivider satisfying all of the following requirements:

- All plans and specifications for the Project have been approved by the City
- Any right-of-way required for the Project has been secured and dedicated
- All required permits and environmental clearances necessary for the Project have been secured

- Provision of all performance bonds, payment bonds, and warranty bonds as described in Article XVIII
- Payment of all City fees and costs
- Subdivider has provided evidence satisfactory to the City that it has complied with and satisfied Article IV (Competitive Bidding, Equal Opportunity, and Equal Benefits) and Article VI (Consultant Selection) of the Agreement.

12.1.7.1.2 Up to fifty percent (50%) of the Reimbursable Costs for the Project subject to the Subdivider satisfying all of the above referenced requirements for the twenty-five percent (25%) reimbursement and Subdivider having received valid bids for the Project, which have been approved by the City, and has awarded the construction contract. Such reimbursement, shall be based on the Reimbursable Costs.

12.1.7.1.3 Up to ninety percent (90%) of the Reimbursable Costs for the Project at the time of Operational Acceptance.

12.1.7.1.4 The remaining ten percent (10%) of the Reimbursable Costs shall be paid to Subdivider upon the later of: (i) the recordation by Subdivider of the Notice of Completion and delivery of a conformed copy to City, or (ii) the City's written acceptance of the Project As-Built Drawings [Final Completion].

12.1.7.2 ***Cutoff for Submission of Reimbursement Requests*** Subdivider shall submit all Reimbursement Requests within six (6) months after the Final Completion or earlier as set forth in Section 12.1.8. Any Reimbursement Request submitted after the Cutoff Date shall constitute a Non-Reimbursable Cost and Subdivider shall not be entitled to any reimbursement for those costs or expenses.

12.1.8 ***Verification of Reimbursement Request*** Subdivider shall on a monthly basis provide reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:

12.1.8.1 Subdivider shall submit one (1) copy of a Reimbursement Request (cover letter and documentation) to the City's Resident Engineer [RE] for work completed per the Plans and Specifications and/or Extra Work.

12.1.8.2 Prior to the approval of the Reimbursement Request, the RE shall verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request. The RE shall review the Project on-site for quality of material and assurance and adherence to bid list, contract estimates and the Plans and Specifications. The RE shall also review as-builts and Best Management Practices (BMPs), and verify that a lien release has been prepared. The RE shall notify the Subdivider of any preliminarily disallowed costs so that the Subdivider has the opportunity to review items with the RE.

12.1.8.3 The RE shall initial the Reimbursement Request package, noting any disallowed costs, maintain a copy, and forward a copy to the Senior Civil Engineer or designated City representative for review.

12.1.8.4 The Senior Civil Engineer or designated City representative shall review cost documentation and monitor the RE's expenses charged to Project, as well as other City Administrative Costs. The Senior Civil Engineer or designated City representative shall also serve as the liaison between the RE and the Facilities Financing Project Manager [FF Project Manager].

12.1.8.5 After review and approval, the Senior Civil Engineer or designated City representative shall prepare a report or memorandum to Facilities Financing [FF] indicating the reimbursement amount and that the invoice is appropriate to pay if/as funds are/become available. The Senior Civil Engineer or designated City representative shall also send a copy of the report or memorandum to the Subdivider. The memorandum shall indicate any costs to be disallowed and the reason for the disallowance. The Reimbursement Request shall be forwarded to the FF Project Manager with the memorandum recommending payment and identifying disallowed expenses. Subdivider shall then submit an invoice to the City for the reimbursement amount approved by City.

12.1.8.6 The FF Project Manager shall verify that reimbursements are scheduled in the Financing Plan and verify FBA cash/credits are available for reimbursement.

12.1.9 ***Priority of Reimbursement.*** Reimbursement to Subdivider in the form of FBA credits for Project will be subsequent to reimbursement of City's equipment purchases, Furniture Fixtures & Equipment (FF&E), and City's Administrative Expenses incurred in connection with the Project or Financing Plan and FBA, but takes priority over any FBA Reimbursable Project other than:

12.1.9.1 Any State or Federally mandated project.

12.1.9.2 Any other Financing Plan project that is the subject of a reimbursement agreement entered into prior to the Effective Date of this Agreement.

12.1.9.3 To the extent Subdivider failed to properly notify City in writing of any actual or anticipated increases in Estimated Costs as required under Sections 2.6 and 3.4, the reimbursement for the cost increases, if approved by City, will be subsequent in priority to those projects with agreements approved by the City Council prior to the City Council's approval of increased Estimated Costs.

ARTICLE XIII. PUBLIC RELATIONS

- 13.1 **Presentations.** Subdivider, and Subdivider's agents, shall be available for all presentations required to be made to City Council, Council Committees, any other related committees, and citizen groups to provide them with information about the Project as well as presentations to any governing or regulatory body or agency for other approvals as may be required.
- 13.2 **City as Primary Contact.** Subdivider agrees that City is the primary contact with the media regarding Project and Subdivider shall forward all questions regarding Project status to the Responsible Department's Senior Public Information Officer.
- 13.3 **Advertising.** Subdivider acknowledges that advertising referring to City as a user of a product, material, or service by Subdivider and/or Subdivider's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval.
- 13.4 **Recognition.** Subdivider shall place a sign, placard, or other similar monument on Project site during construction, which shall acknowledge Subdivider's and City's joint efforts in designing and constructing Project, and identifying that Project is funded with FBA funds. Subdivider shall properly recognize City and include City of San Diego's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of City shall be reviewed and approved by the Responsible Department's Senior Public Information Officer. For assistance with proper recognition, or if Subdivider is contemplating a dedication or ground breaking ceremony, Subdivider shall contact the Responsible Department's Senior Public Information Officer.
- 13.5 **Dedication Ceremony.** City or Subdivider shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on Project site at any reasonable time following Operational Acceptance of Project, provided Subdivider receives prior approval from the Engineering & Capital Projects Department for the ceremony and provides an opportunity for appearances by the Mayor, Council Members and other appropriate City officials. Subdivider shall contact the Responsible Department's Senior Public Information Officer to arrange a mutually acceptable date and time for any ceremony. Invitation shall not be sent out or a date set until the

Responsible Department's Senior Public Information Officer has approved the time and date for the ceremony.

- 13.6 **Cleanup.** Subdivider shall be responsible for the cleanup of the Project site and the restoration and repair of any damage to Project site attributable to any Subdivider sponsored ceremony.

ARTICLE XIV. INSPECTION

- 14.1 **Inspection Team.** The Project shall be inspected by a team composed of representatives from (i) the City's Engineering and Capital Project Department, (ii) the Responsible Department, (iii) City's Development Services Department, (iv) Subdivider's consultant(s), and (v) Subdivider's construction superintendent [Inspection Team].
- 14.2 **Inspection Schedule.** The Project shall be inspected by the Inspection Team in accordance with **Exhibit T**.

ARTICLE XV. PROJECT COMPLETION

- 15.1 **Notice to City.** When Subdivider determines that the Project is substantially complete, Subdivider shall notify City in writing of the Project's status within seven (7) calendar days of Subdivider's determination. The notice shall certify to City that the Project has been completed in accordance with the Construction Documents; all applicable building codes and regulations; all permits; all licenses; all certificates of inspection, use, and occupancy; and ordinances relating to the Project.
- 15.2 **Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by City within fourteen (14) calendar days following Subdivider's notice to City of completion. The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 14.1.
- 15.2.1 ***Punch List.*** A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Subdivider by the RE within fifteen (15) calendar days of the Walk-Through Inspection. Subdivider shall correct the items listed on the Punch List within twenty (20) calendar days of receipt of the Punch List. City's Final Inspection of the Project (as defined in Section 15.4) by City shall be conducted within ninety (90) calendar days of written notification by Subdivider to City that Subdivider has corrected all items identified on the Punch List [Notice of Correction].
- 15.2.2 ***Failure to Identify Items.*** As to any items not included on the Punch List or later discovered, nothing in this Section is intended to limit Subdivider's obligations under this Agreement and City shall maintain all remedies available under this Agreement, at law, or in equity.
- 15.3 **Equipment Demonstration and Cleaning.** Prior to Final Inspection, Subdivider shall demonstrate to City the operation of each system in the Project, and instruct City personnel in operation, adjustment and maintenance of equipment and systems, using the

operation and maintenance data. Subdivider shall also professionally clean the Project, including (if applicable) mopping, sanitizing restrooms, polishing floors, dusting, vacuuming, cleaning glass and windows.

- 15.4 Final Inspection.** The Final Inspection for Project shall be scheduled and conducted within ninety (90) calendar days of the Notice of Correction.

ARTICLE XVI. PROJECT ACCEPTANCE

- 16.1 Acceptance.** Upon Operational Acceptance, Subdivider shall do all of the following:

16.1.1 Notice of Completion. Subdivider shall execute and file with the County Recorder of San Diego County documentation indicating that the Project and all work depicted on the approved City drawings has achieved Final Completion and identifying the date of Project completion [Notice of Completion]. Subdivider shall provide the City Engineer with a conformed copy of the recorded Notice of Completion.

16.1.2 Lien and Material Releases. Subdivider shall cause all contractors and subcontractors to provide lien and material releases as to the Project and provide copies of such lien and material releases to the City or upon approval of City, which shall not be unreasonably withheld, provide bonds in lieu of lien and material releases in a form reasonably acceptable to City for all such work.

- 16.2 Final Completion.** Final Completion of Project shall be deemed to occur on the later of: (i) recordation by Subdivider of the Notice of Completion and delivery of a conformed copy to City; or (ii) submission of all documents required to be supplied by Subdivider to City pursuant to this Agreement, including As-Built Drawings, warranties, operating and maintenance manuals and other Deliverables identified in **Exhibit U**.

16.2.1 As-Builts. City, including but not limited to, Engineering and Capital Projects Department, will evaluate the submitted As-Builts for accuracy and completeness and may return comments. Subdivider shall meet with City until all issues are resolved. Upon issue resolution, Subdivider shall submit a mylar set, a digital copy, and three (3) final blue-line sets of As-Builts stamped by the architect/engineer of record as required by law.

- 16.3 No Waiver.** Subdivider's obligation to perform and complete the Project in accordance with this Agreement and Construction Documents shall be absolute. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Subdivider under this Agreement, nor any use or occupancy of the Project or any part thereof by City, nor any act of acceptance by City, nor any failure to act, nor any review of a shop drawing or sample submittal will constitute an acceptance of work which is not in accordance with the Construction Documents.

- 16.4 Assignment of Rights.** Upon Final Completion of Project, Subdivider shall assign its rights under its contracts with all contractors, subcontractors, design professionals, engineers, and material suppliers associated with the Project to City. Subdivider shall be

required to obtain written approval and acknowledgement, whether in the form of a contract provision or separate document, of such assignment from its contractors, subcontractors, design professionals, engineers, and material suppliers. This assignment of rights shall not relieve Subdivider of its obligations under this Agreement, and such obligations shall be joint and several.

ARTICLE XVII. PROJECT DELIVERABLES

- 17.1 **Project Deliverables.** Prior to Final Completion, Subdivider shall deliver to City "As-Built" and related plans and specifications, operating manuals, warranty materials, and all other materials required by City in the format requested. Documents shall include those listed in **Exhibit U**.
- 17.2 **Ownership of Project Deliverables.** Upon Final Completion or termination, Project Deliverables shall become the property of City. Subdivider and City mutually agree that this Agreement, Construction Documents, and Project Deliverables for Project shall not be used on any other work without the consent of each Party.

ARTICLE XVIII. BONDS AND OTHER ACCEPTABLE SECURITIES

- 18.1 **Payment Bond.** Subdivider shall provide or require its construction contractor to provide City with a payment bond, letter of credit [LOC], cash or other acceptable security as determined by City for material and labor in favor of City for 100% of the proposed construction costs, as determined by competitive bidding [Payment Bond].
- 18.2 **Performance Bond.** Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security as determined by City guaranteeing performance in favor of City for 100% of the proposed construction costs, as determined by competitive bidding [Performance Bond].
- 18.3 **Warranty Bond.** Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security as determined by City guaranteeing Project during the warranty period in favor of City [Warranty Bond]. Subdivider shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.
- 18.4 **Term.** The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until Operational Acceptance of Project by City. Upon Operational Acceptance, City shall follow the procedures outlined in California Government Code Section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.
- 18.5 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

- 18.6 **Licensing and Rating.** The bonds shall be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent (10%) of its capital and surplus.
- 18.7 **Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Subdivider shall within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to City.

ARTICLE XIX. INDEMNITY & DUTY TO DEFEND

- 19.1 **Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 19.2 and 19.3 below, to the fullest extent permitted by law, Subdivider shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Subdivider or Subdivider's agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Subdivider, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Subdivider's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.
- 19.2 **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of design professional services, Subdivider shall require its design professional to indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Subdivider's design professional or design professional's officers or employees.
- 19.3 **Design Professional Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Subdivider's design professional or design professional's officers or employees.

- 19.4 **Insurance.** The provisions of this Article are not limited by the requirements of Article XX related to insurance.
- 19.5 **Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.
- 19.6 **Indemnification for Liens and Stop Notices.** Subdivider shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Subdivider shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Subdivider shall be responsible for payment of all persons entitled to assert liens and stop notices.
- 19.7 **Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article.

ARTICLE XX. INSURANCE

- 20.1 **General.** Subdivider shall not begin work on Project under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article.
- 20.2 **Type and Amount of Insurance.** For each Project, the City Attorney shall confer with the City's risk management department and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Project [Required Insurance]. Subdivider shall obtain the Required Insurance prior to the commencement of construction. City's standard insurance provisions are attached as **Exhibit V**. If Subdivider is not informed otherwise in writing of Required Insurance, City's standard insurance provisions included in **Exhibit V** shall be the Required Insurance for the Project.
- 20.3 **Written Notice.** Except as provided for under California law, any Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Subdivider to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.
- 20.3.1 Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" are present on a certificate, they shall be deleted.
- 20.4 **Rating Requirements.** Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VI" rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

- 20.5 **Non-Admitted Carriers.** City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.
- 20.6 **Additional Insurance.** Subdivider may obtain additional insurance not required by this Agreement.
- 20.7 **Obligation to Provide Documents.** Prior to performing any work on Project, Subdivider shall provide copies of documents including but not limited to certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.
- 20.8 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Subdivider. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
- 20.9 **Policy Changes.** Subdivider shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.
- 20.10 **Reservation of Rights.** City reserves the right, from time to time, to review the Subdivider's insurance coverage, limits, deductible and self insured retentions to determine if they are acceptable to City. City will reimburse the Subdivider for the cost of the additional premium for any coverage-requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.
- 20.11 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Subdivider's obligations under this Agreement, including indemnity.
- 20.12 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal of required insurance during the term of this Agreement, and for a period of up to ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

ARTICLE XXI. WARRANTIES

- 21.1 **Warranties Required.** Subdivider shall require the construction contractor and its subcontractors and agents provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warranties shall be enforceable by and inure to the benefit of City.
- 21.1.1 **Materials and Workmanship.** All work on the Project shall be guaranteed against defective workmanship and all materials furnished by construction contractor or its agents shall be guaranteed against defects for a period of one (1) year from the date of the Project's Final Completion. Construction contractor

shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.

21.1.2 ***New Materials and Equipment.*** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, all materials and equipment incorporated into Project are new unless otherwise specified.

21.1.3 ***Design, Construction, and Other Defects.*** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, all work is in accordance with the plans and specifications and is not defective in any way in design, construction or otherwise.

21.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Subdivider's and Subdivider's agents, material supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in the format specified in this Section.

21.2.1 ***Durable Binder.*** Obtain warranties, executed in triplicate by Subdivider, Subdivider's agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.

21.2.2 ***Table of Contents.*** All warranties shall be listed and typewritten in the sequence of the table of contents of the Project manual, with each item identified with the number and title of the specification Section in which specified, and the name of product or work item.

21.2.3 ***Index Tabs.*** Each warranty shall be separated with index tab sheets keyed to the table of contents listing.

21.2.4 ***Detail.*** Provide full information, using separate typewritten sheets, as necessary. List Subdivider's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.

21.2.5 ***Warranty Start Date.*** This date shall be left blank until the date of Final Completion.

21.2.6 ***Signature and Notarization.*** All warranties shall be signed and notarized. Signatures shall be required from Subdivider's construction contractor and where appropriate, the responsible subcontractor.

21.3 **Term of Warranties.** Unless otherwise specified or provided by law, all warranties, including those pertaining to plants, trees, shrubs and ground cover, shall extend for a term of one (1) year from the date of Final Completion.

21.4 **Meetings.** During the one (1) year warranty period described in Section 21.3, Subdivider shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Engineering and Capital

Projects Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of Project during the one (1) year warranty period.

ARTICLE XXII. DEFECTIVE WORK

- 22.1 Correction, Removal, or Replacement.** All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Construction Documents is defective [Defective Work]. If within the designated warranty period, or such additional period as may be required by law or regulation, Project is discovered to contain Defective Work, Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.
- 22.2 City's Right to Correct.** If circumstances warrant, including an emergency or Subdivider's failure to adhere to Section 22.1, City may correct, remove, or replace the Defective Work. In such circumstances, Subdivider shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.
- 22.3 Defects Constitute Non-Reimbursable Costs.** All costs incurred by Subdivider or Subdivider's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Subdivider for Defective Work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Subdivider's bond if Subdivider has been paid in full.
- 22.4 Extension of Warranty.** When Defective Work, or damage there from, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, shall be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.
- 22.5 No Limitation on other Remedies.** Exercise of the remedies for Defective Work pursuant to this Article shall not limit the remedies City may pursue under this Agreement, at law, or in equity.
- 22.6 Resolution of Disputes.** If Subdivider and City are unable to reach agreement on disputed work, City may direct Subdivider to proceed with the work and compensate Subdivider for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. Subdivider shall maintain and keep all records relating to disputed work in accordance with Article XXIV.
- 22.7 Prior to Final Acceptance and Reimbursement to Subdivider.** Where Defective Work has been identified prior to the Final Completion of Project, Subdivider shall:

22.7.1 ***Correct, Remove, or Replace.*** Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work. Costs incurred to remedy Defective Work are Non-Reimbursable Costs. Where Defective Work is not remedied, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount paid, or make a claim against the construction contractor's bond.

ARTICLE XXIII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

- 23.1 **Maintenance Period.** If the construction contractor is required to install or maintain landscaping and/or irrigation, Subdivider shall require the construction contractor to provide a maintenance period to begin on the first day after all landscape and irrigation work on Project is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and shall continue until ninety (90) calendar days after the date of Final Completion or ninety (90) calendar days after the date the Landscaping and Irrigation is accepted, whichever is longer. The maintenance period shall be 120 calendar days if turf is seeded.
- 23.2 **Maintenance Area.** Subdivider shall require the construction contractor to maintain all areas of Project, including areas impacted or disturbed by the Project.
- 23.3 **Maintenance Required.** Subdivider shall require the construction contractor to conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Construction contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days. Maintenance shall also include the following: (1) filling and replanting of any low areas that may cause standing water (2) adjusting of sprinkler head height and watering pattern, (3) filling and recompaction of eroded areas, (4) weekly removal of trash, litter, clippings and foreign debris, (5) inspecting plants at least twice per week, and (6) protecting all planting areas against traffic or other potential causes of damage.
- 23.4 **Landscape and Irrigation Inspection.** At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled with two (2) weeks notice, a minimum of eighty (80) calendar days after the plant maintenance period commencement, or when Subdivider or Subdivider's contractor notifies City they are ready for the Final Inspection, whichever comes last. The City will notify Subdivider of all deficiencies revealed by the inspection before acceptance.
- 23.5 **Extension of Maintenance Period.** Subdivider shall require the construction contractor to extend completion of the maintenance period when in City's opinion improper

maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. Subdivider shall require the construction contractor accept responsibility for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the maintenance period are Non-Reimbursable Costs.

- 23.6 Replacement.** Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, shall be replaced within fourteen (14) calendar days of notification by City. Subdivider shall require the construction contractor include, at construction contractor's expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report shall indicate reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size.

23.6.1 *Same Kind and Size.* Plants used for replacement shall be of the same kind and size as specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. Subdivider shall require the cost of all repair work to existing improvements damaged during replacements be borne by the construction contractor. Costs of replacement are Non-Reimbursable Costs.

ARTICLE XXIV. RECORDS AND AUDITS

- 24.1 Retention of Records.** Subdivider, consultants, contractors, and subcontractors shall maintain data and records related to this Project and Agreement for a period of not less than five (5) years following the Effective Date of this Agreement.

- 24.2 Audit of Records.** At any time during normal business hours and as often as City deems necessary, Subdivider and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Subdivider and all contractors or subcontractors will permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Subdivider shall pay all City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. All such costs are Non-Reimbursable Costs.

- 24.2.1 *Costs.*** Subdivider and Subdivider's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Agreement.

ARTICLE XXV. NOTICES

- 25.1 Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 25.2 Effective Date of Notice.** Except in relation to Change Orders as provided for in Section 3.3.3 or as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (1) on personal delivery, (2) on the second business day after mailing by Certified or Registered U.S. Mail, Return Receipt Requested, (3) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (4) upon documented successful transmission of facsimile.
- 25.3 Recipients.** All demands or notices required or permitted to be given to the City or Subdivider shall be delivered to all of the following:
- 25.3.1 Director, Engineering & Capital Projects Department
City of San Diego
City Administration Building
202 C Street, M.S. #9B
San Diego, California 92101
Facsimile No: (619) 533-4736
- 25.3.2 Facilities Financing Manager
Development Services Department, Facilities Financing
City of San Diego
1010 Second Avenue, Suite 600 M.S. #606F
San Diego, California 92101
Facsimile No: (619) 533-3687
- 25.3.3 Ms. Beth Fischer
Pardee Homes
Division President – San Diego
6025 Edgewood Bend Court
San Diego, CA 92130
- 25.3.4 Thomas F. Steinke, Esq.
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101
- 25.4 Change of Address(es).** Notice of change of address shall be given in the manner set forth in this Article XXV.

ARTICLE XXVI. MEDIATION

- 26.1 Mandatory Mediation.** If dispute arises out of, or relates to the Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.
- 26.2 Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.
- 26.3 Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.
- 26.3.1** If AAA is selected to coordinate the mediation [Administrator], within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.
- 26.3.2** The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.
- 26.3.3** If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.
- 26.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

26.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

26.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE XXVII. MISCELLANEOUS PROVISIONS

- 27.1 **Term of Agreement.** Following the adoption of the City Council Ordinance authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by City Attorney in accordance with San Diego Charter Section 40 [Effective Date]. Unless otherwise terminated, the Agreement shall be effective until (i) the final reimbursement payment is made; or (ii) one year after the Warranty Bond terminates, whichever is later but not to exceed ten (10) years.
- 27.2 **Construction Documents.** Construction documents include, but are not limited to: construction contract, contract addenda, notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from other agencies, the special provisions, the plans, standard plans, standard specifications, reference specifications, and all modifications issued after the execution of the construction contract.
- 27.3 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 27.4 **Gender & Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders, and (ii) the singular number includes the plural number.
- 27.5 **Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.
- 27.6 **Incorporation of Recitals.** All Recitals herein are true and correct to the Parties' best knowledge and belief, and are fully incorporated into this Agreement by reference and are made a part hereof.
- 27.7 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or Subdivider shall be deemed to be both covenants and conditions.

- 27.8 **Integration.** This Agreement and all Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 27.9 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 27.10 **Drafting Ambiguities.** The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 27.11 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 27.12 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 27.13 **Good Faith Performance.** The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 27.14 **Further Assurances.** City and Subdivider each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 27.15 **Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.
- 27.16 **Compliance with Controlling Law.** Subdivider shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement (and if expressly made applicable by the City Council, California Labor Code Section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of Project), including inspection and land surveying work. In addition, Subdivider shall require its consultants, contractors, subcontractors, agents, and employees comply immediately with all directives

issued by City or its authorized representatives under authority of any laws, statutes, resolutions, ordinances, rules, regulations or policies.

- 27.17 **Hazardous Materials.** Hazardous Materials constitute any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code Sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code Sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code Sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code Sections 25100-25250.25). Subdivider agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.
- 27.18 **Jurisdiction, Venue, Choice of Law, and Attorney Fees.** The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.
- 27.19 **Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 27.20 **Third-Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third-party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third-party beneficiary of all Subdivider's contracts, purchase orders and other contracts between Subdivider and third-party services. Subdivider shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 27.21 **Non-Assignment.** The Subdivider shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this Section shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.
- 27.22 **Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 27.23 **Independent Contractors.** The Subdivider, any consultants, contractors, subcontractors, and any other individuals employed by Subdivider shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any

right to direct Subdivider concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, shall mean only that Subdivider shall follow the direction of City concerning the end results of the performance.

- 27.24 Approval.** Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld; however, nothing in this Section shall in any way bind or limit any future action of the City Council pertaining to this Agreement or Project.
- 27.25 No Waiver.** No failure of either City or Subdivider to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 27.26 Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been duly obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.
- 27.27 Remedies.** Notwithstanding any other remedies available to City at law or in equity, Subdivider understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Subdivider complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by the through its Mayor, pursuant to Ordinance No. O-_____, authorizing such execution, and by Subdivider, as well as their respective counsel.

This Agreement was approved as to form and content by the City Attorney this _____ of _____, 2013, and this date shall constitute the Effective Date of this Agreement.

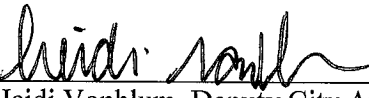
THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: 7/30/13


By: 
, Chief Operating Officer

Approved as to form:
JAN I. GOLDSMITH, City Attorney

Dated: 7/31/13

By: 
Heidi Vonblum, Deputy City Attorney

PARDEE HOMES , a California Corporation
(formerly known as Pardee Construction Company)

By: 

Title: Vice President

Dated: 3/27/13

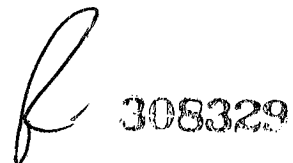
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EXHIBIT LIST

EXHIBIT 'A'

Resolution No. R-299207

EXHIBIT 'B'

Del Mar Mesa Financing Plan Project 43-1
Carmel Mountain Road – Neighborhood 10 Boundary to Del Mar Mesa Road

EXHIBIT 'C'

Description of Work & Depiction of Work

EXHIBIT 'D'

Project Schedule

EXHIBIT 'E'

Estimated Costs for Project

EXHIBIT 'F'

Project Schedule Obligation and Components

EXHIBIT 'G'

Meeting Requirements

EXHIBIT 'H'

Preconstruction, Progress & Special Meeting Agenda

EXHIBIT 'I'

Procedure for Processing Change Orders

EXHIBIT 'J'

Equal Benefits Ordinance Certificate of Compliance

EXHIBIT LIST

EXHIBIT 'K'

Consultant Provisions

EXHIBIT 'L'

Design and Construction Standards

EXHIBIT 'M'

Certification for Title 24/ADA Compliance

EXHIBIT 'N'

Approval of Design, Plans and Specifications

EXHIBIT 'O'

Construction Obligations

EXHIBIT 'P'

Certification for a Drug-Free Workplace

EXHIBIT 'Q'

Product Submittal and Substitution

EXHIBIT 'R'

Extra Work Provisions

EXHIBIT 'S'

Notification of Reimbursable Project

EXHIBIT LIST

EXHIBIT 'T'

Inspection Schedule

EXHIBIT 'U'

Project Deliverables

EXHIBIT 'V'

Typical Insurance Provisions

EXHIBIT A
Conditions of Approval

RESOLUTION NUMBER R- 299207

ADOPTED ON MAY 11 2004

WHEREAS, Pardee Homes, Applicant, and Latitude 33, Engineer, submitted an application to the City of San Diego for a 186-lot vesting tentative map (Vesting Tentative Map No. 25674) for the Shaw Lorenz project [Project], located easterly of Carmel Mountain Road and south of Little McGonigle Ranch Road, and legally described as Portions of Sections 22 and 28, Township 14 South, Range 3 West, San Bernardino Meridian, in the Del Mar Mesa Specific Plan area, in the AR-1-1 zone; and

WHEREAS, on March 11, 2004, the Planning Commission of the City of San Diego considered Vesting Tentative Map No. 25674, and pursuant to Resolution No. 3489-PC voted to recommend City Council approval of the project; and

WHEREAS, the matter was set for public hearing on MAY 11 2004, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Vesting Tentative Map No. 25674:

1. The map proposes the subdivision of a 277.96-acre site into 186 lots for residential development (139 residential, nine private driveways, three open space, four urban amenity and thirty-one Home Owner Association) for residential development and an 8.23-acre remainder lot). This type of development is consistent with the City of San Diego's Progress Guide and General Plan and the Del Mar Mesa Specific Plan which designate the area for residential use. The proposed map will retain the community's character by encouraging orderly, sequential development compatible in its intensity with surrounding existing and future land development.

2. The design and proposed improvements for the map are consistent with the zoning and development regulations of the AR-1-1 zone in that:

a. All lots have minimum frontage on a dedicated street which is open to and usable by vehicular traffic, as allowed under a Planned Development Permit/Site Development Permit/Coastal Development Permit/Neighborhood Use Permit [PDP/SDP/CDP/NUP] permit.

b. All lots meet the minimum dimension requirements of the AR-1-1 zone, as allowed under a PDP/SDP/CDP/NUP permit.

c. All lots are designed so that required improvements do not result in nonconforming lots in respect to building area, setbacks, side yard and rear yard regulations, as allowed under a PDP/SDP permit.

d. Development of the site is controlled by Planned Development Permit No. 26575/Site Development Permit No. 25676/Coastal Development Permit No. 25677/Neighborhood Use Permit No. 76234.

3. The design and proposed improvements for the subdivision are consistent with California Government Code section 66473.1 and San Diego Municipal Code section 125.0444(g) regarding the design of the subdivision for future passive or natural heating and cooling opportunities.

4. The site is physically suitable for residential development. The harmony in scale, height, bulk, density, and coverage of development creates a compatible physical relationship to surrounding properties for which this area has been planned.

5. The site is physically suitable for the proposed density of development. This is consistent with the community plan, which provides for residential uses.

6. The city of San Diego conducted an Initial Study in compliance with the California Environmental Quality Act which concluded that the project would result in significant direct environmental impacts in the following areas:

Aesthetics/Neighborhood Character/Landform Alteration, Biological Resources/Land Use, Light/Glare/Shading, Cultural Resources, Hydrology/Water Quality, Paleontology, Public Facilities and Services, and Transportation/Circulation. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects of the proposed project as identified in the Findings to Master Environmental Impact Report No. 95-30353 (Project No. 2873).

7. The design of the subdivision and the type of improvements will not likely cause serious public health problems inasmuch as needed public services and facilities are available or required by condition of this map to provide for water and sewage facilities, as well as other related public services.

8. The design of the subdivision and the type of improvements are such that they will not conflict with any easements, acquired by the public at large, for access through or use of property within the proposed subdivision as demonstrated by the City Engineer's request for public dedications and adequate improvement on the proposed subdivision map.

9. The decision maker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources in conformance with the Subdivision Map Act section 66412.3 and San Diego Municipal Code section 125.0440(h).

10. The property contains a right-of-way which must be vacated to implement the final map in accordance with San Diego Municipal Code section 125.0430.

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), the following rights-of-ways and public services easements, located within the project boundaries as shown in Vesting Tentative Map No. 25674, shall be vacated, contingent upon the recordation of the approved final map for the project.

An easement for a public road and incidental purposes in favor of the County of San Diego, recorded November 15, 1895, in Book 243, page 426 of deeds.

An easement for a public highway, and incidental purposes, known as RS 65, shown on New Survey 65, in favor of the County of San Diego, recorded August 22, 1896, in Book 257, page 32 of deeds.

"Old Shaw Ridge Road" and "Old Vine Street," unrecorded, unimproved roads used as public right of way.

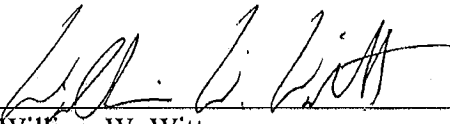
A building restricted easement granted on Parcel Map 17083, recorded February 26, 1993.

An easement for a water main and the right of ingress and egress and incidental purposes in favor of the City of San Diego, recorded July 12, 1971 as file numbers 149167, 149169 and 149170, all of Official Records.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Vesting Tentative Map No. 25674 is granted to Pardee Homes, Applicant and Latitude 33, Engineer, subject to the attached conditions which are made a part of this resolution.

APPROVED: CASEY GWINN, City Attorney

By


William W. Witt
Deputy City Attorney

WWW:pev
04/19/04
Or.Dept: DSD
R-2004-1101

Document 10

CITY COUNCIL CONDITIONS FOR VESTING TENTATIVE MAP NO. 25674
SHAW LORENZ PROJECT

ADOPTED BY RESOLUTION NO. R-_____ ON _____

1. This vesting tentative map will expire on (to be three years from the date of approval by City Council).
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the first final map, unless otherwise noted.
3. Any party, on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this vesting tentative map, may protest the imposition within ninety days of the approval of this vesting tentative map by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
4. The final maps shall conform to the provisions of Planned Development Permit No. 26575/Site Development Permit No. 25676/Coastal Development Permit No. 25677/Neighborhood Use Permit No. 76234.
5. The "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, shall be made a condition of map approval. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.
6. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
7. "California Coordinate System" means the coordinate system as defined in Sections 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
8. Every final map shall:
 - a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the

north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.

b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

9. The Subdivider shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the Findings to Environmental Impact Report, LDR NO. 2873 satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit and/or recording of the first final map and/or issuance of a building permit, as such timing is described in the MMRP, all conditions of the MMRP shall be adhered to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Aesthetics/Neighborhood Character/Landform Alteration
- Biological Resources
- Biological Resources/Land Use
- Cultural Resources
- Light/Glare/Shading
- Hydrology/Water Quality
- Paleontological Resources
- Public Facilities and Services
- Transportation/Circulation

10. The approval of this tentative map by the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies, including, but not limited to, the Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).

11. The design of the subdivision shall include private easements, if any, serving parcels of land outside the subdivision boundary or such easements must be removed from the title of the subdivided lands prior to filing any parcel or final map encumbered by these easements.

12. The subdivider has reserved the right to record multiple final maps over the area shown on the approved tentative map. In accordance with Article 66456.1 of the Subdivision Map Act, the City Engineer shall retain the authority to review the areas of the tentative map the subdivider is including in each final map. The City Engineer may impose reasonable conditions relating to the filing of multiple final maps, in order to

provide for orderly development, such as off site public improvements, that shall become requirements of final map approval for a particular unit.

13. The subdivider is permitted to file up to eight (8) final maps. The subdivider has requested approval to file final maps out of numerical sequence. This request is approved, subject to the provision that the City Engineer can review the off site improvements in connection with each unit.

14. Pursuant to City Council Policy 600-20, the subdivider shall provide evidence to ensure that an affirmative marketing program is established.

15. The subdivider shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

16. Prior to issuance of grading permits, a geotechnical investigation report shall be required that specifically addresses the proposed grading plans and cites the City's Work Order and Drawing No. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over- excavation depth, and limits of remedial grading.

17. Undergrounding of existing and proposed public utility systems and service facilities is required according to the San Diego Municipal Code.

18. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the subdivider to provide the right-of-way free and clear of all encumbrances and prior easements. The subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.

19. Prior to the issuance of any construction permits, the subdivider shall complete the improvement of Carmel Mountain Road from its terminus at Harvest Run Drive at Neighborhood 10 to the easterly boundary of Torrey Hills subdivision as identified by condition 18 and 19 of Tentative Map 91-0834 to the satisfaction of the City Engineer.

20. Carmel Mountain Road is classified as a two-lane collector with two-way left turn lane at the proposed access points as identified on the vesting tentative map, sheets 7 and 11. The subdivider shall dedicate 68 feet of right of way and shall provide 50 feet of pavement including curb, gutter and an eight to ten foot curb to property line distance, satisfactory to the City Engineer.

21. Carmel Mountain Road is classified as a two-lane collector where access is not required and as identified on the vesting tentative map, sheets 7 and 11. The

subdivider shall dedicate 58 feet of right of way and shall provide 40 feet of pavement including curb, gutter and an 8 to 10 foot curb to property line distance, satisfactory to the City Engineer.

22. The subdivider shall provide multi purpose decomposed granite trail on one side only along private driveways "AA" thru "II". The subdivider shall provide a minimum of 28 feet of pavement within 44 feet of parkway including a four-foot multi purpose trail, satisfactory to the City Engineer.

23. Carmel Mountain Road northerly end shall have no public connection to Del Mesa Road prior to the completion of Camino Santa Fe between Del Mar Mesa Road and State Route 56, satisfactory to the City Engineer, in accordance with the Transportation Phasing Plan of the Del Mar Mesa Facilities Benefits Assessment.

24. The subdivider shall construct a traffic signal at the intersection of Carmel Country Road and Canyon Ridge Way/Craven Ridge Way, satisfactory to the City Engineer.

25. The subdivider shall construct a traffic signal at the intersection of Carmel Country Road and Cloverhurst Way, satisfactory to the City Engineer.

26. The subdivider shall provide a proper transition from the existing four lane major into the proposed two lane collector at the westerly end of Carmel Mountain Road.

27. Little McGonigle Ranch Road is classified as a two lane collector street. The subdivider shall dedicate 65 feet of right of way and shall provide 44 feet of pavement including curb, gutter and an eight to ten foot curb to property line distance, satisfactory to the City Engineer.

28. The subdivider shall dedicate from 70 to 82 feet of right of way for all private streets entrances "A", "C", "G", "H" and "I" and shall provide 40 feet of pavement, 12 to 24-foot-wide median, curb, gutter and a five (5)-foot decomposed granite sidewalk within 10-foot curb to property line distance.

29. The subdivider shall provide additional widening on Carmel Mountain Road to accommodate a left turn pocket at the intersection with Street "H" to the satisfaction of the City Engineer, as shown on sheets 7 and 11.

30. The subdivider shall dedicate 45-foot radius right-of-way for public cul-de-sac's for entrances "A", "C", "G", "H" and "I" and shall provide 35-foot radius of pavement, curb, gutter and a five (5)-foot-wide decomposed granite sidewalk within 10-foot curb to property line distance.

31. Water Requirement

a. Prior to the submittal for any engineering permits, the Subdivider shall provide an acceptable potable water study satisfactory to the Water Department Director. The study shall plan the pressure zone(s) and public water facilities necessary to serve this development, including redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the study.

b. The Subdivider shall design and construct all public water facilities, as required in the accepted water studies for Del Mar Mesa Subarea V, necessary to serve this development including, but not limited to, the minimum 30-inch 610 HGL water transmission pipeline within the Carmel Mountain Road right-of-way (ultimate diameter to be determined at final engineering). Water facilities, as shown on the approved tentative map, shall be modified based on the accepted water studies and to maintain redundancy throughout construction phasing at final engineering.

c. The Subdivider shall locate all public water mains a minimum of five (5) feet from the face of any curb or edge of pavement, and a minimum of ten (10) feet from any other utility or structure (unless otherwise designed for), in a manner satisfactory to the Water Department Director and City Engineer.

d. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two (2) fire hydrants or thirty (30) dwelling units are located on a dead end main then the Subdivider shall install a redundant water system in a manner satisfactory to the Water Department Director and the City Engineer. All fire hydrants shall be connected to distribution facilities, not transmission pipelines.

e. The Subdivider shall vacate the existing 30-foot wide water, easement traversing the property, in its entirety in a manner satisfactory to the Water Department Director and the City Engineer. Public right-of-way vacations, as shown on the approved tentative map, shall be modified on the final map(s) at final engineering to comply with this requirement.

f. The Subdivider shall grant adequate water easements, including vehicular access to each appurtenance (meters, blow offs, valves, fire hydrants, etc.), for all public water facilities that are not located within fully improved public rights of way, satisfactory to the Water Department Director. Easements shall be located within single lots and over entire drive aisles where appropriate.

g. Grants of water easements shall have the following minimum widths: water mains with services or fire hydrants - 32 feet with 24 feet of paving and full height curbs. All paving shall conform to schedule "J" or better. Water easements, as shown on the approved tentative map, will require modification based on standards at final engineering in a manner satisfactory to the Water Department Director and the City Engineer.

h. The Subdivider agrees to design and construct all proposed public water facilities, including services, meters, and easements, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards, and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private or modified at final engineering to comply with standards.

i. If any portion of the subdivision will have gated access, then the Subdivider shall provide keyed access to the Water Operations Division in a manner satisfactory to the Water Department Director. The City shall not be held responsible for any issues that may arise relative to the availability of keys.

j. The Subdivider shall provide CC&Rs for the operation and maintenance of on site private water facilities that serve or traverse more than one lot or dwelling unit.

k. Providing water for this development is dependent upon prior construction of certain water facilities in previously approved developments in this area. If facilities have not been constructed when required for this development, then the construction of certain portions of these previously approved water facilities, as required by the City Engineer, will become off-site improvements required for this development.

32. Wastewater Requirements

a. Prior to the submittal of any public improvement drawings, including grading plans, the developer shall submit a sewer study satisfactory to the Metropolitan Wastewater Department Director, for the sizing, grade and alignment of public gravity sewer mains and to show that the existing and proposed public sewer facilities will provide adequate capacity and have cleansing velocities necessary to serve this development and the drainage basin in which it lies and adjacent areas that cannot gravity sewer to an existing sewer system.

b. The subdivider shall install all facilities, as required by the accepted sewer study, necessary to serve the proposed development. Sewer facilities, as shown on the approved tentative map, will require modification based on the accepted sewer study.

c. The subdivider shall design all proposed public sewer facilities to the most current edition of the City of San Diego's sewer design guide. Proposed facilities that do not meet the current standards shall be private or re-designed.

d. The subdivider shall design all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide. Proposed facilities that do not meet the current standards shall be re-designed.

e. The subdivider shall grant adequate sewer, and/or access easements, including vehicular access to each manhole, for all public sewer facilities that are not located within public rights-of-way, satisfactory to the Metropolitan Wastewater Department Director. The minimum easement width for sewer mains with manholes is 20 feet. The easements shall be located within single lots.

f. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the Metropolitan Wastewater Department Director. Vehicular access roadbeds to sewer mains with laterals shall be a minimum 24 foot wide and paved full width. An additional five (5) feet of width per additional utility is required for easements containing more than one utility. For sewer mains more than 10 feet deep, two feet of additional easement width for each foot of depth over 10 feet shall be required.

g. No structures or landscaping that would inhibit or prevent access shall be installed in or over any sewer access easement.

h. No structures or landscaping, including private sewer facilities and enhanced paving, shall be installed in or over any easement prior to the applicant obtaining an Encroachment Maintenance and Removal Agreement.

i. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.

j. The subdivider shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot will have its own sewer lateral or provide CC&R's for the operation and maintenance of on-site private sewer mains that serve more than one lot.

k. Providing sewer for this development is dependent upon prior construction of certain sewer facilities in previously approved developments in the area. If they have not been constructed when required for this development, then the construction of certain portions of these previously approved sewer facilities, as required by the City Engineer, will become off-site improvements required for this development.

l. For public on-site sewer facilities located within a gated community, the developer shall provide the Wastewater Collection Divisions with keyed access satisfactory to the Metropolitan Wastewater Department Director. The City will not be held responsible for any issues that may arise relative to possession of the keys.

33. The medians of the private driveways shall not extend into the public street right of way.

34. The drainage system proposed for this subdivision, as shown on the approved tentative map, is private and subject to approval by the City Engineer.

35. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.

A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99 08 DWQ.

36. Prior to the issuance of any construction permit, the Subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.

37. Prior to the issuance of any construction permit, the Subdivider shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

38. Prior to the issuance of any construction permit the Subdivider shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, consistent with the approved Water Quality Technical Report.

39. The subdivider shall grant the City a flowage easement for the flood plain in Lot "A" as shown on Panel 1341 of the Federal Insurance Rate maps, dated June 19, 1997.

40. Lots "D", "E" and "F" shall have open space easements and be owned and maintenance by the Home Owners Association.

41. Lots "A", "B" and "C" shall be granted in fee to the City of San Diego, at no cost, for open space. Said lots shall be free and clear of all private easements, private encroachments, and private agreements and private liens.

42. Access and any type of gate shall be prohibited from private lots to fee owned open space lots. A barrier or fence is required. Within any fee owned lots, the location of the barrier or fence, its height, type of material, etcetera, shall be satisfactory to the Deputy Director of the Open Space Division, Parks and Recreation Department in conformance with Vesting Tentative Map, Sheet 21 of 33.

43. Prior to issuance of any grading permit, all litter and hazardous materials accessible from existing dirt roads or disturbed areas shall be removed.

44. Prior to issuance of any grading permit, revegetated slopes adjacent to or in Lots A", "B" and "C" shall be planted and maintained in accordance with the Biology Guidelines and Guidelines for Conducting Biological Surveys for a period of five years or until a healthy, vigorous coverage of eighty percent is achieved. A separate performance bond for these slopes shall be posted. Temporary irrigation shall be removed and the Deputy Director of the Open Space Division, Parks and Recreation Department shall be notified when the eighty percent coverage is achieved. Upon Park and Recreation Department staff field verification that the success criteria has been met, the performance bond for all such work shall be released.

45. All lots with storm drain pipes discharging into the open space area shall be extended to the bottom of the canyon.

46. City will not take ownership of detention basins. All detention basins shall become a separate lot and have access easements from a public street or existing access easements.

47. Prior to recordation of the final map, the Permittee or subsequent Owner/Developer shall identify on a separate sheet titled 'Non-title Sheet' the brush management areas in substantial conformance with Exhibit 'A.' These brush management areas shall be identified with a hatch symbol with no specific dimensions or zones called out. The following note shall be provided on the 'Non-title sheet' to identify the hatched areas:

"Indicates fire hazard reduction zone per Section 6 of the City of San Diego 'Landscape Technical Manual' approved by the Planning Commission on March 16, 1989 as Resolution No. 0480-PC, and approved by the City Council on October 3, 1989 as Resolution No. 274506, and any other building code regulations."

48. This tentative map is a vesting tentative map. As such, the subdivider shall pay an additional \$300 fee to the Planning & Development Review Department for each final map processed in connection with this vesting tentative map.

49. This subdivision is in a community plan area designated in the General Plan as Future Urbanizing. As such, special financing plans have been, or will be, established to finance the public facilities required for the community plan area.

Therefore, in connection with Council approval of the final map, the subdivider shall comply with the provisions of the financing plan then in effect for this community plan area, in a manner satisfactory to the Development Services Manager. This compliance shall be achieved by entering into an agreement for the payment of the assessment, paying a Facilities Benefit Assessment (FBA) or such other means as may have been established by the City Council.

FOR INFORMATION:

- This development may be subject to payment of a park fee prior to the filing of the final subdivision map in accordance with San Diego Municipal Code. This property is also subject to a building permit park fee in accordance with San Diego Municipal Code.
- This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by Education Code section 17620, in accordance with procedures established by the Director of Building Inspection.
- This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.
- This vesting tentative map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

EXHIBIT B
Financing Plan Project Sheet

TITLE: **CARMEL MOUNTAIN ROAD - NEIGHBORHOOD 10 BOUNDARY TO
DEL MAR MESA ROAD**

PROJECT: 43-1
COUNCIL DISTRICT: 1
COMMUNITY PLAN: DEL MAR MESA

JUSTIFICATION: THIS PROJECT IS REQUIRED TO ACCOMMODATE THE ADDITIONAL TRAFFIC GENERATED AS A RESULT OF DEVELOPMENT IN DEL MAR MESA.

PROJECT FUNDING

Category	Amount
Subdivider	\$4,487,000
FBA-DEL MAR MBSA	\$2,700,000

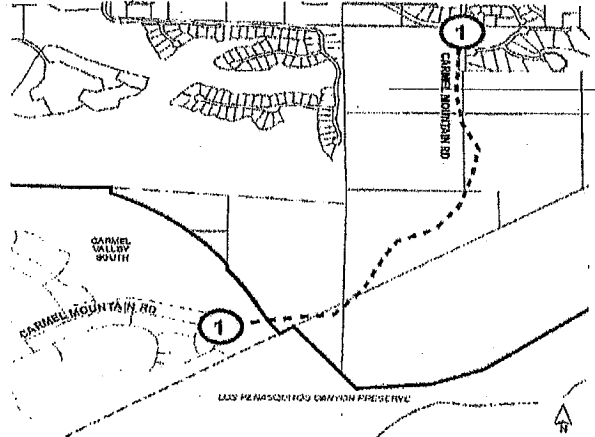
33

EXHIBIT C
Depiction and Description of Project

CITY W.O. NO. 423902, 423903
 CITY DWG. NO. 33418-D, 33419-D, 33472-D
 PARBEE JOB NO. 70129602
 CARREL MOUNTAIN ROAD 30" WATER MAIN
 AND SUPPORTING SYSTEM FOR FIRE HYDRANTS
 (DEL. MAR MESA FBA PROJECT NO. U-4)
 CITY W.O. NO. 423901 & CITY DWG. NO. 33418-D
 PARBEE JOB NO. 70129604
 CARREL MOUNTAIN ROAD 30" WATER MAIN
 (CARREL VALLEY FBA PROJECT NO. W-2)
 CITY W.O. NO. 423900, 423901 & CITY DWG. NO. 33418-D
 PARBEE JOB NO. 70129603 & PARBEE LANDSCAPE JOB NO. 70129605
 CARREL MOUNTAIN ROAD (CARREL VALLEY FBA PROJECT NO. T-9) (1.34C-1.02)
 CITY W.O. NO. 423900, 423902 & CITY DWG. NO. 33418-D, 33419-D, 33472-D
 PARBEE JOB NO. 70129601 & PARBEE LANDSCAPE JOB NO. 70129605
 CARREL MOUNTAIN ROAD (DEL. MAR MESA FBA PROJECT NO. 43-1)
 ALSO INCLUDES TRAIL & NORTHERLY WILDLIFE UNDERCROSSING (1.2, 84C-10.37)
 CITY W.O. NO. 423900, 423903 & CITY DWG. NO. 33419-D, 33472-D
 PARBEE JOB NO. 70128004, LANDSCAPE JOB NO. 70128002
 CARREL MOUNTAIN ROAD (SUBSIDIZERS RESPONSIBILITY)
 CITY W.O. NO. 423900 & CITY DWG. NO. 33417-D
 PARBEE JOB NO. 70129001, LANDSCAPE JOB NO. 70128003
 ROUGH GRADING AND LOCAL IMPROVEMENTS (11.0, 44C-88.72)

5620 FRIARS ROAD
SAN DIEGO, CA 92110
619.291.0707
(FAX)619.291.4165

EXHIBIT 'C'

(Descriptions of Work)

4,571 Lineal Feet of Roadway Fronting Open Space, Includes Grading and Storm Drain Improvements Associated with Road. Approximately 476 Lineal Feet of 18" Storm Drain and 561 Lineal Feet of Water Tight 18" Storm Drain. See City of San Diego Drawing Numbers 33416-D through 33419-D.

Construction of 88,141 Square Feet of Trail Along Carmel Mountain Road and of Urban Amenity Trail and One Conspan Wildlife Undercrossing at STA 204+02 on Carmel Mountain Road. (See City Drawing Number 33418-D STA 153+02.00 to STA 154+00.00, Drawing Number 33472-D STA 184+74.78 to STA 206+38.99 for Improvement Plans, and Drawing Number 33416-D for Grading Plans of this Project).

EXHIBIT D
Project Schedule

INSPECTION SCHEDULE FOR PROJECT 43-1
IN DEL MAR MESA

	Pipeline	Construction							
	Notice to Proceed	Est. time period 12 months	Notice of Completion	Preliminary Walk-Thru	Punch List	Operational Acceptance	Final Inspection		
CITY INSPECTION:									
Resident Engineer	X	CONTINUAL	X	X	X	X	X		
Testing: Compaction		periodic							
Bac-T		close out					X		
Operations: Water		close out			X		X		
Sewer		close out			X		X		
Storm Drain		close out			X		X		
PARDEE INSPECTION									
Engineer of Record: Pipeline	X	periodic	X		X	X			
Bridge	X	periodic	X		X	X			
Survey Engineer	X	CONTINUAL							
Soils Engineer	X	CONTINUAL							
Project Manager	X	CONTINUAL	X	X	X	X	X	X	X
Project Site Manager	X	CONTINUAL	X	X	X	X	X	X	X

EXHIBIT E
Estimated Cost

EXHIBIT 'E'

Estimated Cost of Carmel Mountain Road-Neighborhood 10 Boundary to Little McGonigle Ranch Road (Formerly De Mar Mesa Road) (Project No. 43-1)

Item	Description	Amount
	Hard Costs	
1	Grading	\$ 242,000
2	Storm Drain	\$ 604,000
3	Water	\$ 41,000
4	Dry Utilities	\$ 150,000
5	Surface Improvements	\$ 552,000
6	Erosion Control	\$ 181,000
7	Landscaping & Revegetation	\$ 1,434,000
	Subtotal Hard Costs	\$ 3,204,000
	Soft Costs	
1	Engineering	\$ 83,000
2	Soils Testing	\$ 61,000
3	Surveying/Staking	\$ 93,000
4	Construction Management	\$ 30,000
5	Permitting, Plan Check, Inspection Fees	\$ 237,000
6	Bonding & Advertising	\$ 60,000
7	Landscape Consultant	\$ 60,000
8	Paleo Monitoring	\$ 5,000
9	Archeo Monitoring	\$ 5,000
10	Biological & Native American Monitoring	\$ 8,000
	Subtotal Soft Costs	\$ 642,000
	Subtotal (Hard & Soft Costs)	\$ 3,846,000
	10% Contingency on Hard Costs	\$ 320,000
	Subtotal	\$ 4,166,000
	5% Administration Fee	\$ 208,000
	Total	\$ 4,374,000

Note 1: The project contingency is used to cover potential excess construction related Hard costs.

Note 2: All figures are rounded to the nearest \$1,000.

Revised 3-20-2013

EXHIBIT F

Project Schedule Obligations and Components

1. **Subdivider's Obligation.** To the extent required by City, Subdivider shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.
 - A. *Project Initiation.* During Project initiation and design phases, Subdivider shall submit an updated Project Schedule on a quarterly basis to City for approval.
 - B. *Construction Phase.* During Construction, Subdivider shall submit an updated Project Schedule monthly to City and shall include:
 - i. Forecast data with the intended plan for the remainder of the contract duration.
 - ii. Actual data with indications of when and how much work and/or services was performed (percent complete).
 - iii. Logic changes or other changes required to maintain the Project Schedule.
2. **Detail and Format.** Unless otherwise directed by City, the Project Schedule shall include all phases of the Project. It shall be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and shall include:
 - A. *Identification of design and construction activities and their sequence.*
 - i. Work shall be divided into a minimum of 5 activities.
 - ii. Activities shall not exceed 21 calendar days in duration or \$50,000 in value, except long lead procurement and submittal activities or those accepted by City in writing.
 - iii. Each activity shall be assigned a budget value in accordance with Agreement requirements and activity descriptions.
 - a. The sum of all budget values assigned shall equal Estimated Cost.
 - b. Each construction activity shall indicate the estimated labor days and materials quantities required.
 - iv. Incorporate specific activity and time requirements.
 - v. Include 10 weather/delay days, commonly known as "rain days." The late finish date shall be the fully elapsed Contract Time.
 - B. *Float Time.* Show activities on their early dates with corresponding Total Float Time noted beside them.
 - i. Project Schedule shall not include more than 40 calendar days of Float Time absent written City approval.
 - C. *Milestones.* Show milestones with beginning and ending dates.
 - i. Milestones shall include schematic plans, 60% design, 90% design, 100% design; bid opening; Notice to Proceed; start construction; end construction; and Project Completion and Acceptance.
 - D. *Relationships.* Show all appropriate definable relationships with separate explanation of constraints and each start-start, finish-finish, or lag relationship. Relate all activities to each other and to the first appropriate milestone.
 - E. *Procurement.* Show the procurement of major equipment and materials.
 - F. *Submittals.* Include all submittals required and identify the planned submittal dates, adequate review time, and the dates acceptance is required to support design and construction.
3. **Submittal.** The Project Schedule shall be submitted to City on a computer disk in PRIMAVERA Project Planner P3e/c Release Version 4.1 SP1 software in conformance with Construction Plans & Scheduling by AGC or America, or other software specifically designated by City.

EXHIBIT G

Meeting Requirements

1. **Preconstruction Meeting.** Subdivider shall conduct a preconstruction meeting with its officers, agents, and employees and City. The purpose of this meeting is to discuss: (1) the Agreement conditions, (2) Scope of Work clarifications, and (3) City policies, inspection requirements, and procedures.
 - A. *Attendance.* Subdivider shall ensure that its construction contractor and major subcontractors, the Project Superintendent, and the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Subdivider or City attend the preconstruction meeting.
 - B. *Minutes.* Subdivider shall take corresponding meeting minutes and distribute copies to all attendees.
2. **Progress Meetings.** Subdivider shall conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Subdivider's Construction Superintendent, Subdivider's Project Manager, Subdivider's Design Consultant, City representatives including Responsible Department representatives, the Engineering and Capital Projects Project Manager and the Resident Engineer.
 - A. *As-Builts.* Subdivider shall bring updated As-Builts and verify that the latest changes have been made.
 - B. *Special Meetings.* Special meetings shall occur at Project phases as outlined in **Exhibit H**.
 - C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Subdivider has given no less than seven calendar days prior written notice of the rescheduled meeting.
3. **Agenda.** All meetings shall include at a minimum the agenda identified in **Exhibit H**.

EXHIBIT H

Preconstruction, Progress, & Special Meeting Agenda

1. Preconstruction. The issues below should be made part of the Preconstruction Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 1.1 Permits and utility issues, including telephone, cable, gas, and electric. RE to announce to Subdivider that franchise companies may be working in the area of the Project and that coordination regarding such a situation may need to be done.
 - 1.2 Establish parking areas for construction employees and possibly patrons/others.
 - 1.3 Subdivider's payment procedure and forms.
 - 1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.
 - 1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).
 - 1.6 Distribution and discussion of the construction schedule.
 - 1.7 Procedure for maintaining the Project record documents.
 - 1.8 Distribution of the Second Opinion Option Form.
 - 1.9 Designation of persons authorized to represent and sign documents for the RE and Subdivider and the respective communication procedures between parties.
 - 1.10 Safety and first aid procedures including designation of Subdivider's safety officer.
 - 1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.
 - 1.12 Testing laboratory or agency and testing procedures.
 - 1.13 Establish schedule for progress meetings.
 - 1.14 Procedure for changes in work requested by Subdivider, notice to RE, timing, etc.
 - 1.15 Procedure for changes in work requested by City.
 - 1.16 Public safety.
 - 1.17 Housekeeping procedures and Project site maintenance.
 - 1.18 Protection and restoration of existing improvements.
 - 1.19 Sanitation, temporary lighting, power, water, etc.
 - 1.20 Procedure for encountering hazardous substances.
 - 1.21 Any items requested by attendees of preconstruction meeting/open discussion.
2. Progress Meetings. The issues below should be made part of the Progress Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 2.1 Review progress of construction since the previous meeting.
 - 2.2 Discuss field observations, problems, conflicts, opportunities, etc.
 - 2.3 Discuss pre-planning opportunities.
 - 2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule; revise the schedule if necessary.
 - 2.5 Discuss Subdivider's plan for progress during the next construction period and the corresponding inspections necessary.

- 2.6 Discuss submittal status.
- 2.7 Discuss request for information (RFI) status.
- 2.8 Progress of schedule.
- 2.9 Disputed items.
- 2.10 Non-conformance/non-compliance items.
- 2.11 New business of importance from any member of the meeting.
- 2.12 Deferred approvals and their coordination.
- 2.13 Discuss request for proposals, change orders, and progress payment status.

3. Special Meetings.

- 3.1 Grading. Prior to grading the site, the RE shall call a grading mini-preconstruction meeting. This meeting applies when surveying is being supplied by the City. The superintendent, the Subdivider's appropriate subcontractors, the RE, the City's survey crew, and any appropriate consultants (if deemed necessary by the RE) shall attend. Unless otherwise noted, the agenda will be to coordinate the staking, reference markers, bearings, various site conditions, etc. as defined in the contract documents and any necessary coordination of scope or scheduling between the respective parties.
- 3.2 Roofing. Upon completion of the roofing structural diaphragm and prior to installing flashing, and/or any other roofing materials, the RE shall call a roof mini-preconstruction meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, the roof suppliers manufacturer's representative, and any appropriate consultants (if deemed necessary by the RE) shall attend. The agenda will be to coordinate the flashing, caulking, sealing, and different roofing materials and/or contractors on site with the various field conditions.
- 3.3 Landscaping. Upon completion of the grading and prior to the installation of any landscaping equipment, supplies, etc., the RE shall call a landscaping mini-preconstruction meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) shall attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.
- 3.4 Mini-Preconstruction Meeting. Prior to the installation of any mechanical, electrical, plumbing, and sprinkler system equipment, the Subdivider shall call a mini-preconstruction meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) shall attend. The intent of this meeting is to ensure that the prime contractor is adequately coordinating the space of the facility so as to not impede the visual integrity of the overall product.
- 3.5 Other. Upon appropriate notice to other parties, the RE may call special meetings at times agreed to by all parties involved.

EXHIBIT I

Procedure for Processing Change Orders

1. **Forms Required.** All Change Orders shall be in writing on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to Subdivider.
2. **Written Approval of Change Orders.** Change Orders that will not result in an increase in the Estimated Cost may be approved by the RE. If a requested Change Order would result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval.
3. **Process for Approval of Change Orders.** Subdivider shall notify the RE in writing of the need for a Change Order. A Change Order must indicate whether the change will result in any change to the Estimated Cost, Project Schedule, or Project quality established during the design and submittal review process.
 - 3.1 ***Resident Engineer Approval.*** If the Change Order request does not result in an increase in the Estimated Cost, the RE shall either approve or reject the Change Order in writing within fourteen (14) calendar days of receiving Subdivider's written notice, provided Subdivider has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to Subdivider's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.
 - 3.2 ***City Council Approval.*** For Change Orders not subject to Section 3.1 above, City Council approval is required. In such cases, once a Change Order is preliminarily accepted by the appropriate City staff, City staff shall process the Change Order along with any required amendments to the Financing Plan and this Agreement as a 1472 (Request for Council Action). At a hearing on such Request for Council Action, City Council may either approve or reject such Change Orders. Council Approval shall not be subject to the fourteen (14) calendar day response time set forth above in Section 3.1. Furthermore, nothing in this Agreement shall compel the City Council to take any particular action.

Exhibit J

Equal Benefits Ordinance Certification of Compliance

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:

CITY OF SAN DIEGO

EQUAL BENEFITS PROGRAM

202 C Street, MS 9A, San Diego, CA 92101

Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name: Pardee Homes, a California corporation	Contact Name: Gino Cesario
Company Address: 10880 Wilshire Blvd, 19th Floor	Contact Phone: 310-446-1208
Los Angeles, CA 90024	Contact Email: gino.cesario@pardeehomes.com

CONTRACT INFORMATION

Contract Title: Del Mar Mesa - Carmel Mountain Road (43-1)	Start Date:
Contract Number (if no number, state location):	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
 - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

- ☒ I affirm compliance with the EBO because my firm (contractor must select one reason):
- ☒ Provides equal benefits to spouses and domestic partners.
 - ☐ Provides no benefits to spouses or domestic partners.
 - ☐ Has no employees.
 - ☐ Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
- ☐ I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

L. Gino Cesario, Vice President

Name/Title of Signatory

[Signature]

Signature

4.12.13

Date

FOR OFFICIAL CITY USE ONLY

Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved – Reason:
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rev 02/15/2011

EXHIBIT K

Consultant Provisions

1. **Third Party Beneficiary.** The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Subdivider, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.
2. **Competitive Bidding.** Consultant shall ensure that all design plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.
3. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.
4. **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
5. **Design Professional Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
6. **Enforcement Costs.** Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.
7. **Professional Liability Insurance.** For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. Consultant shall ensure both that (1) this policy's retroactive date is on or before

the date of commencement of the work to be performed under this Agreement; and (2) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego's exposure to loss.

8. **Commercial General Liability (CGL) Insurance.** Consultant shall keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.
9. **Insurance Policy Requirements.** Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.
10. **Workers Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.
11. **Compliance Provision.** Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 (ADA) and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code (Title 24). Further, Consultant is responsible as designer and employer to comply with all parts of the ADA and Title 24.
12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.

EXHIBIT L

Design and Construction Standards

1. **Laws.** Subdivider shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:
 - A. *Permits.* Development Services Department permits, hazardous material permits,
 - B. *Building Codes.* State and local Building Codes
 - C. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code [Title 24].* It is Subdivider's sole responsibility to comply with all ADA and Title 24 regulations. See Subdivider Certification attached as **Exhibit M**.
 - D. *Environmental.* Subdivider shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.
 - E. *Air, Water, and Discharge.* Subdivider shall comply with the Clean Air Act of 1970, the Clean Water Act, and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).
 - F. *ESBSSA.* Subdivider shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - G. *City Directives.* Subdivider shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
2. **Standard Specifications.** Subdivider shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
 - A. *Greenbook.* Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments.
 - B. *DOT.* California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
3. **City Standards.** Subdivider's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
 - A. *City of San Diego's Drainage Design Manual.*
 - B. *City of San Diego's Landscape Technical Manual produced by the Planning Department.*
 - C. *City of San Diego's Street Design Manual.*
 - D. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.*
 - E. *City of San Diego's Technical Guidelines for Geotechnical Reports.*
 - F. *City of San Diego Standard Drawings including all Regional Standard Drawings.*
 - G. *City of San Diego Data Standards for Improvement Plans.*
 - H. *The City of San Diego Consultant's Guide to Park Design and Development.*
 - I. *The City of San Diego Water Department Guidelines and Standards*

EXHIBIT M

Certification for Title 24/ADA Compliance

Carmel Mountain Road-Neighborhood 10 Boundary to Little McGonigle Ranch Road (formerly Del Mar Mesa Road) Project 43-1 in the Del Mar Mesa Community (the "Project")

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for the street intersections within the Project shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with the Americans with Disabilities Act of 1990.

Dated: April 10, 2013

By: Debby Reece
Debby Reece, PE

EXHIBIT N

Approval of Design, Plans, and Specifications

UNLESS OTHERWISE DIRECTED BY THE CITY IN WRITING, SUBDIVIDER SHALL OBTAIN APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS IN THE MANNER IDENTIFIED BELOW:

1. **City Approval**. Subdivider shall obtain City approval of the design, in writing, at schematic design, 60% Design, and 90% Design.
 - A. *Condition Precedent*. City approval of the Schematic Design Documents is a condition precedent to authorization to proceed with subsequent work on the Project. City will notify Subdivider in writing within four weeks after receipt of Design Documents of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Schematics for City approval.
 - B. *Sixty (60) Percent Design*. At 60% design, City will notify Subdivider in writing within eight weeks after receipt of Design Documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Design Documents for City approval.
 - C. *Ninety (90) Percent Design*. At 90% design, City will notify Subdivider in writing within ten weeks after receipt of design documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Design Documents for City approval.
2. **Submittal of Plans, Specifications, and Budget**. Within six (6) months of City Council approval of this Agreement, Subdivider shall deliver to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of the Project.
3. **Citywide Review of 100% Plans and Specifications**. City agrees to review the Plans and Specifications and provide City's written comments to Subdivider within ninety (90) calendar days of the date such Plans and Specifications are delivered to City in accordance with the notice provisions in Article XXV. Plans and Specifications shall include City's standard drawings and specifications as described in **Exhibit L**. If requested by City, Subdivider shall make changes to the Plans and Specifications, but Subdivider shall not be responsible for implementing such changes if they would increase the Estimated Cost by more than 5%. In such a case, the changes to the Plans and Specifications shall be considered additive or deductive bid alternates to the Project.
4. **Final Approval and Permit Review**. City approval of the Plans and Specifications is a condition precedent to authorization to proceed with subsequent work on the Project. Approval and permit review will require a minimum of ninety (90) calendar days from the date that the Plans and Specifications were submitted to the City review, if no changes are required, or ninety (90) days from the date the requested changes are submitted to the City.

EXHIBIT O

Construction Obligations

1. **Site Safety, Security, and Compliance.** Subdivider shall be responsible for site safety, security, and compliance with all related laws and regulations.
 - A. *Persons.* Subdivider shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Subdivider to access the Project site.
 - B. *Other.* Subdivider is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been accepted by the City pursuant to Article I.
 - C. *Environment.* Subdivider shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including, but not limited to, the Clean Air Act of 1970, the Clean Water Act, Executive Order Number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Furthermore, the Subdivider shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan (SWPPP) to be implemented by the Subdivider during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.
2. **Access to Project Site.**
 - A. *Field Office.* Subdivider shall provide in the construction budget a City field office (approximately 100 square feet) that allows City access to a desk, chair, two drawer locking file cabinet with key, phone, fax, computer, copy machine and paper during working hours.
 - B. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Subdivider.
 - C. *Site Tours.* Site tours may be necessary throughout completion of the Project. Subdivider shall allow City to conduct site tours from time to time as the City deems necessary. City will give Subdivider notice of a prospective tour and a mutually agreeable time shall be set. Subdivider is not obligated to conduct tours or allow access for tours when City fails to give prior notice.
3. **Surveying and Testing.** Subdivider shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:
 - A. *Existing Conditions.* Subdivider shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The soils consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.
 - B. *Utilities.* Subdivider shall provide all required information for the construction or relocation of public or private utility facilities that must be constructed or relocated as a result of this Project. Subdivider shall file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.
 - C. *Geotechnical Information.* Subdivider shall obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement, that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.
4. **Public Right of Way.** All work, including, materials testing, special testing, and surveying to be conducted in the public right-of-way shall be coordinated with the City.

- A. *Materials Testing.* Subdivider shall pay for and coordinate with City to have all material tests within the public right-of-way and any asphalt paving completed by City's Material Testing Laboratory.
 - B. *Surveying.* Subdivider shall pay for and coordinate with City's Survey Section all surveying required within the public right-of-way.
 - C. *Follow all Laws, Rules, and Regulations.* Subdivider agrees to follow all City standards and regulations while working in the public right-of-way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.
5. **Traffic Control.** Subdivider shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans, and/or notes.
 6. **Inspections.** Subdivider shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.
 - A. *Reports.* Subdivider shall provide City all special inspection reports within seven (7) calendar days of inspection. Subdivider shall report all failures of special inspections to City.
 - B. *Remedies.* Remedies for compliance shall be approved by Subdivider, Subdivider's consultants, City's Development Services Department, and City representatives.
 - C. *Concealing Work.* Prior to concealing work, Subdivider shall obtain approval of the work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as provided in this Agreement. This approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Subdivider shall fulfill all requirements of each of these three entities.
 7. **Property Rights.** Subdivider shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements and Council Policy 600-04, "Standards for Rights of Way and Improvements Installed Therein." City shall not require Subdivider to provide any easement documents for land to which Subdivider does not have title; however, Subdivider shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement or other entitlement.
 8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Subdivider in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Subdivider. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Subdivider is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Subdivider in accordance with the terms of the Agreement for the work completed. All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon reimbursement as set forth above.
 9. **Maintenance.** Subdivider shall maintain and be responsible for the Project site until Acceptance of the Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.
 10. **Drug-Free Workplace.** Subdivider agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. Subdivider shall certify to the City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace form (**Exhibit P**).
 - A. *Subdivider Notice to Employees.* Subdivider shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

- B. *Drug-Free Awareness Program.* Subdivider shall establish a drug-free awareness program to inform employees about all of the following:
- i. The dangers of drug abuse in the work place.
 - ii. The policy of maintaining a drug free work place.
 - iii. Available drug counseling, rehabilitation, and employee assistance programs.
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - v. In addition to Section 10.A above, the Subdivider shall post the drug-free policy in a prominent place.
- C. *Subdivider's Agreements.* Subdivider further certifies that each contract for consultant or contractor services for this Project shall contain language that binds the consultant or contractor to comply with the provisions of Section 10 "Drug-Free Workplace," as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and contractors shall be individually responsible for their own drug-free work place program.

EXHIBIT P

Certification for a Drug-Free Workplace

PROJECT TITLE: Carmel Mountain Road–Neighborhood 10 Boundary to Little McGonigle Ranch Road (formerly Del Mar Mesa Road), Project 43-1 in the Del Mar Mesa Community (the “Project”)

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace, and that Pardee Homes, a California corporation has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

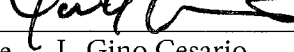
Signed 
Printed Name L. Gino Cesario
Title Vice President
Date 4.12.13

EXHIBIT Q

Product Submittal and Substitution

1. **Product Submittal.** Prior to the bidding process, Subdivider shall submit for City approval a list of products intended for use in the Project. Upon Subdivider's completion of Plans and Specifications, City will review and approve products specified therein. Subdivider shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Subdivider's receipt of submittal. Approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits, or regulations.
2. **Substitutions.** Subdivider shall submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) calendar days, City will allow substitution only when a product becomes unavailable due to no fault of Subdivider's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Subdivider agrees that City requires Consultant's input and as such Subdivider shall coordinate a seven (7) calendar review by its Consultant.
 - A. *Substantiate Request.* Subdivider shall include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Contract Documents.
 - B. *Subdivider Representations.* By submitting a substitution request, Subdivider is representing to City all of the following: (a) Subdivider has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) Subdivider is providing the same warranty for the proposed product as was available for the specified product; (c) Subdivider shall coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) Subdivider shall waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.
 - C. *Separate Written Request.* City will not consider either substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of construction contract documents.
3. **Samples.**
 - A. *Postage.* Samples shall be sent to Subdivider's office, postage prepaid.
 - B. *Review.* Subdivider shall furnish to City for review, prior to purchasing, fabricating, applying or installing, two (2) samples (other than field samples) of each required material with the required finish.
 - i. Where applicable, all samples shall be 8" x 10" in size and shall be limited in thickness to a minimum consistent with sample analysis. In lieu thereof, the actual full-size item shall be submitted.
 - ii. Subdivider shall assign a submittal number. Subdivider shall include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the Project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.
 - iii. All materials, finishes, and workmanship in the complete building shall be equal in every respect to that of the reviewed sample.
 - iv. City will return one submitted sample upon completion of City review.
 - v. Subdivider's or Subdivider's agents' field samples shall be prepared at the site. Affected finish work shall not commence until Subdivider or Subdivider's agents have been given a written review of the field samples.

EXHIBIT R

Extra Work Provisions

1. **Extra Work.** City may at any time prior to Project Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not exceed five percent (5%) of the Estimated Cost at the time of Bid Award, without invalidating this Agreement and without notice to any surety.
 - A. *Requests in Writing.* All requests for Extra Work shall be in writing, and shall be treated as and are subject to the same requirements as Change Orders. Subdivider shall not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this Section.
2. **Bonds Required for Extra Work.** Subdivider's and Subdivider's agents' bonds, under Article XVIII, shall cover any Extra Work provided that the Extra Work is paid for by the Project Budget.
3. **Reimbursement for Extra Work.** Work performed by Subdivider as Extra Work is reimbursable in the same manner as described in Article XII. The Project Contingency as described in Article III, will be used first to cover the costs of Extra Work.
4. **Markup.** Subdivider will be paid a reasonable allowance for overhead and profit. The allowance shall not exceed five percent (5%) and shall be added to the Subdivider's costs for Extra Work.

EXHIBIT S

Notification of Reimbursable Projects

Pursuant to Section 12.1.1 of the Reimbursement Agreement with Pardee Homes for Project No. 43-1, Carmel Mountain Road-Neighborhood 10 Boundary to Little McGonigle Ranch Road (formerly Del Mar Mesa Road) in the Del Mar Mesa Community, adopted pursuant to City Council _____ effective on _____, 2013, Pardee Homes hereby notifies the City of San Diego that work will begin, or has begun, on the Carmel Mountain Road-Neighborhood 10 Boundary to Little McGonigle Ranch Road (formerly Del Mar Mesa Road), also known as Project 43-1 in the Del Mar Mesa Community Financing Plan on or about Summer or Fall of 2012.

PTS Reference # _____

Development Services Deposit Account # _____

Pardee Homes,
a California corporation

By: Bob Fickler

[Insert Title] Vice President

Dated: 4/17/13

EXHIBIT T

Inspection Schedule

No. of Calendar Days ¹	Event or Task
Day 0	Subdivider determines construction of project is complete
7 days	Subdivider notifies City in writing that construction of project is complete
14 days	Preliminary Walk-Through Inspection conducted by City
15 days	City prepares Punch List from Walk-Through Inspection and presents to Subdivider
20 days	Subdivider corrects items listed on Punch List
90 days	City conducts Final Inspection following written notification from Subdivider that Punch List items have been corrected

¹ Number of calendar days following the completion of the immediately preceding event or task

EXHIBIT U

Project Deliverables

1. Master Contract Documents.

- A. *Working Drawings.* Subdivider shall prepare Working Drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
 - i. Quality. Subdivider shall make Working Drawings by one of the following methods: permanent ink, Computer Aided Drafting, a permanent photographic reproduction process, or with pencil made for use on drafting film and permanently fixed with spray coating. Scale and clarity of detail shall be suitable for half-size reduction.
 - ii. Font and Contents. Specifications shall be typewritten with one type face, using carbon ribbon or equivalent on bond paper utilizing Greenbook format. Subdivider will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Greenbook standards as needed.
- B. *Surveys.* Subdivider shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.
- C. *Schematic Design Documents.* Subdivider shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.
 - i. Schematic Design Documents shall include, but not be limited to the following:
 - a. Sketches with sufficient detail to illustrate the scale and location of Project components.
 - b. Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.
 - c. Analysis of parameters affecting design and construction for each alternate considered.
 - d. Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.
 - e. Probable construction costs for the base Project and all additive alternates considered.
 - f. Summary of Project requirements and a recommendation.
 - g. Artistic renderings of the Project.
 - ii. Form. Subdivider's Schematics shall conform to the quality levels and standards in size, equipment, and all facets of its design and deliverables as set forth in City specifications and as may be updated prior to commencement of construction.
- D. *Design Development Documents.* Subdivider shall prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. These documents shall contain, at a minimum, the following:
 - i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
 - ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.
 - iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.
 - iv. Proposed construction schedules.

- v. Technical 'Special Provisions' section of the Specifications.
 - vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
 - vii. Probable Project construction costs, for each component of the Project being considered in this phase.
 - viii. Color board with material samples.
- E. *Construction Documents.* Subdivider shall provide, based on the approved Design Development documents, Working Drawings and Contract Specifications (throughout the Agreement and attached exhibits referred to as Construction Documents) setting forth in detail the requirements for construction of the Project, including the necessary bidding information.
- F. *Utility Location Requests.* Along with initial submission of Construction Documents, Subdivider shall furnish copies of the Service and Meter Location Request and all utility companies' verifications.
- G. *Cost Estimate.* Subdivider shall provide a construction cost estimate based on the Construction Documents.
- H. *H, G, & E Reports.* Subdivider shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports as required by City.
- I. *As-Builts.* Subdivider shall provide As-Builts.
- i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Subdivider shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Subdivider shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Subdivider shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.
 - ii. Subdivider shall include all of the following on the As-Builts:
 - a. Depth of foundation in relation to finished first floor.
 - b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
 - c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
 - d. Field changes of dimensions and details.
 - e. Changes authorized by approved proposal requests, construction change orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.
 - f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
 - g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
 - h. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.
 - i. The title "PROJECT RECORD" in 3/8" letters.
 - iii. Subdivider shall maintain a set of As-Builts at the Project site for reference. Subdivider shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil),

shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.

J. *Operation and Maintenance Manuals.* Subdivider shall submit all Operation and Maintenance manuals prepared in the following manner:

- i. In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.
- ii. A separate volume for each system, including but not limited to mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:
 - a. Part 1: Directory, listing names, addresses, and telephone numbers of Subdivider's agents, suppliers, manufacturers, and installers.
 - b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system. For each specification division or system, provide names, addresses and telephone numbers of Subdivider's agents, suppliers, manufacturers, and installers. In addition, list the following: 1) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.

EXHIBIT V

Typical Insurance Provisions

1. **Types of Insurance.** At all times during the term of this Agreement and for so long as the Agreement requires, Subdivider shall maintain insurance coverage as follows:
 - 1.1 Commercial General Liability. Subdivider shall provide at its expense a policy or policies of Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Subdivider shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars (\$2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars (\$2,000,000); (iii) Personal Injury Limit one million dollars (\$1,000,000); and (iv) Each Occurrence one million dollars (\$1,000,000).
 - 1.2 Commercial Automobile Liability. For all of Subdivider's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Subdivider shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ("Any Auto"). All costs of defense shall be outside the policy.
 - 1.3 Architects and Engineers Professional Liability. For all of Subdivider's employees who are subject to this Agreement, Subdivider shall keep in full force and effect, or Subdivider shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. Subdivider shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Contract. Subdivider agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.
 - 1.4 Worker's Compensation. For all of Subdivider's employees who are subject to this Contract and to the extent required by the State of California, Subdivider shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Subdivider against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Subdivider to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars (\$1,000,00) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Subdivider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
 - 1.4.1 Prior to the execution of the Agreement by the City, the Subdivider shall file the following signed certification:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to

undertake self-insurance, in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Contract."

- 1.5 **Builder's Risk.** To the extent commercially available, Subdivider shall provide a policy of "all risk" Builders Risk Insurance. Subdivider shall add City and its respective elected officials, officers, employees, agents, and representatives to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. Subdivider shall also add its construction contractor, and the construction contractor's subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars (\$50,000). It shall be Subdivider's responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is occupied by City, or a Notice of Completion is filed, whichever occurs first.

2. **Endorsements Required.** Each policy required under Section 1, above, shall expressly provide, and an endorsement shall be submitted to the City, that:

- 2.1 ***Additional Insureds.*** Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.

- 2.1.1 **Commercial General Liability.** The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer's Estimate is one million dollars (\$1,000,000) or more shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, (iii) Your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for Projects for which the Engineer's Estimate is less than one million dollars (\$1,000,000) shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, or (iii) premises owned, leased, controlled, or used by you; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

- 2.1.2 **Commercial Automobile Liability Insurance.** Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Subdivider; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California

Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

- 2.2 *Primary and Non-Contributory.* The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Subdivider's insurance and shall not contribute to it.
- 2.3 *Project General Aggregate Limit.* The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the work performed under this Agreement. Claims payments not arising from the work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.
- 2.4 *Written Notice.* Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Subdivider to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.
- 2.5 The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

RESOLUTION NUMBER R- 308329

DATE OF FINAL PASSAGE JUL 19 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO AUTHORIZE A REIMBURSEMENT AGREEMENT WITH PARDEE HOMES FOR PROJECT NO. 43-1, CARMEL MOUNTAIN ROAD, NEIGHBORHOOD 10 BOUNDARY TO LITTLE MCGONIGLE RANCH ROAD (FORMERLY DEL MAR MESA ROAD) IN THE DEL MAR MESA SPECIFIC PLAN AREA

WHEREAS, Pardee Homes is developing the Shaw Lorenz project in the Del Mar Mesa Specific Plan area; and

WHEREAS, the Del Mar Mesa Specific Plan and the Carmel Valley Neighborhood 10 Precise Plan identified the need for the construction of Carmel Mountain Road in Del Mar Mesa; and

WHEREAS, on November 1, 2005, the Council of the City of San Diego adopted Resolution No. R-301007 approving the Del Mar Mesa Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2006 (Del Mar Mesa Financing Plan); and

WHEREAS, the Del Mar Mesa Financing Plan identifies Project No. 43-1, Carmel Mountain Road – Neighborhood 10 Boundary to Little McGonigle Ranch Road (formerly Del Mar Mesa Road), as a project to be funded with FBA funds from Del Mar Mesa; and

WHEREAS, Pardee Homes' estimated cost to complete Project No. 43-1 is \$4,374,000; and

WHEREAS, under the Del Mar Mesa Financing Plan, a maximum of \$3,000,000, including interest, is available for reimbursement of Project No. 43-1; and

WHEREAS, Pardee Homes agrees that it will not be entitled to reimbursement in an amount greater than \$3,000,000 consistent with the Del Mar Mesa Financing Plan; NOW, THEREFORE,

Passed by the Council of The City of San Diego on JUL 09 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 19 2013.

AUTHENTICATED BY:

BOB FILNER

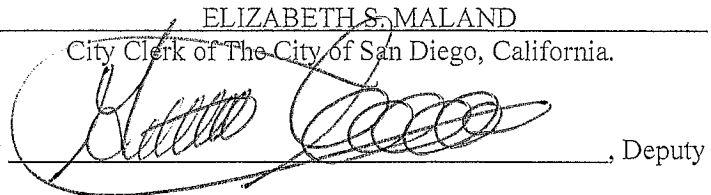
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By

 Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 308329

Passed by the Council of The City of San Diego on July 9, 2013 by the following vote:

YEAS: **LIGHTNER, FACULCONER, GLORIA, COLE, KERSEY, ZAPF,**
 SHERMAN, ALVAREZ.

NAYS: **NONE.**

NOT PRESENT: **EMERALD.**

VACANT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

BOB FILNER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-308329 approved by the Mayor of the City of San Diego, California on
July 19, 2013

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy